Annual Report

Director of Investigation and Research

Competition Act

(formerly Combines Investigation Act)

for the year ended March 31, 1986

Consumer and Corporate Affairs Canada

Consommation et Corporations Canada

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for the year ended March 31, 1986
to the Hon. Harvie Andre, Minister

Consumer and Corporate Affairs Canada
Consommation et Corporations Canada

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December 8, 1986

The Honourable Harvie Andre, P.C., M.P.,
Minister of Consumer and Corporate Affairs,
Ottawa

DEAR SIR:

I have the honour to submit, pursuant to section 99 of the Competition Act (formerly the Combines Investigation Act), the following report of proceedings for the fiscal year ended March 31, 1986.

Yours very truly,

C.S. Goldman
Director of
Investigation and
Research

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CHAPTER I

INTRODUCTION AND SUMMARY OF ACT AND PROCEDURES

This report is made pursuant to section 49 of the Combines Investigation Act, chapter C-23 of the Revised Statutes, 1970, as amended (as it read on March 31, 1986), which provides as follows:

> 49. The Director [of Investigation and Research appointed under the provisions of the Act] shall report annually to the Minister the proceedings under this Act, and the Minister shall within thirty days after he receives it lay the report before Parliament, or, if Parliament is not then in session, within the first fifteen days after the commencement of the next ensuing session.

The purpose of the Combines Investigation Act is to assist in maintaining effective competition as a prime stimulus to the achievement of maximum production, distribution and employment in a mixed system of public and private enterprise. To this end, the legislation seeks to eliminate certain practices in restraint of trade, and to overcome the negative effects of concentration, both of which tend to prevent the economic resources of Canada from being used most effectively to the advantage of all. The Act also contains provisions against misleading advertising and deceptive marketing practices.

Until January 1, 1976, the Act had general application only to commodity production and trade, although certain services in connection with commodities and the price of insurance were also covered. In 1976 the Act was made applicable to pure services by virtue of the Stage I amendments, in the planned two-stage revision of the Act. As a result of the inclusion of services, all economic activities are now subject to the Act except those specifically exempted in whole or in part by the Act, i.e., collective bargaining activities, amateur sports and securities underwriters, or exempted as a result of other legislation, e.g., the Bank Act.

In some areas of the economy, commercial activity, including some of its competitive aspects, is subject to regulation under federal, provincial or municipal legislation. Examples may be found in the fields of marketing legislation, resources conservation and regulation of communications systems. Although such controls may restrict competition, if they are imposed pursuant to valid legislation they may provide a defence to charges under the Combines Investigation Act.

As in other years, members of the public this year sought from the Director of Investigation and Research relief against alleged violations of the Act by suppliers or competitors that, they said, were jeopardizing the solvency of their businesses. To such complainants it has been stressed that the machinery of the Combines Investigation Act is not designed to provide quick relief in such situations. Its purpose is primarily to maintain a competitive environment over a longer period. Although efforts are made to expedite any inquiry, in these circumstances the time required to complete it may be too long to assist such complainants with their immediate problems. The Director, however, brought to the attention of such complainants the provisions in section 31.1, described hereafter, which permit any person to take proceedings in the ordinary civil courts to recover damages they have suffered from conduct prohibited by the Combines Investigation Act.

1. Criminal Offences and Penalties under Part V of the Act

Part V of the Act prohibits under criminal sanctions certain practices that may be generally classified as combinations to lessen competition, mergers and monopolies, specified trade practices, and misleading advertising and deceptive marketing practices.

(a) *Combinations to Lessen Competition (sections 32 to 32.3)*

Combinations, agreements or arrangements in relation to the supply, manufacture, production, etc., of a product to lessen competition unduly are prohibited. The essence of the offence is conspiracy, but it is not necessary to prove that the combination, agreement or arrangement would be likely to eliminate, completely or virtually, competition in the market to which it relates. Bid-rigging whereby one party agrees to refrain from bidding in response to a call for tender or where there is collusion in the submission of bids is, unless made known to the tendering authority, prohibited outright with no requirement of undue lessening of competition. The implementation of a foreign directive by a company operating in Canada that gives effect to an agreement or arrangement entered into outside Canada, which would otherwise be in violation of section 32, is an offence under section 32.1. This section may not be used, however, if any proceedings have been instituted under paragraph 31.6(1)(b) referred to below. Finally, it is an offence under section 32.3 to conspire or agree to limit unreasonably the opportunities for anyone to participate in professional sport or to negotiate with the team of his or her choice. Certain matters such as the international character of the sport must be taken into account by the courts in determining whether an offence has occurred under this provision.

(b) *Mergers and Monopolies*

Being a party to or assisting in, or in the formation of, a merger or monopoly as defined is an offence under section 33. A merger is defined as the acquisition of control over or interest in the business of a competitor, supplier, customer or other person whereby competition would be lessened to the detriment of the public. Monopoly is defined as a situation where one or more persons substantially or completely control, in any area of Canada, the class or species of business in which the person is engaged and has operated or is likely to operate the business to the detriment of the public.

(c) *Specified Trade Practices*

Under section 34 it is an offence to be a party to a sale that discriminates against competitors of a purchaser of an article by granting a discount, rebate, allowance, price concession or other advantage to the purchaser that is not also available to the competitors. An offence does not occur, however, unless such a sale is part of a practice of discriminating and is in respect of a sale of articles of like quality and quantity. It is also an offence to engage in predatory pricing policies whereby products are sold at lower prices in one area of the country than in the remaining areas, or of selling at unreasonably low prices where the effect, tendency or design is to lessen competition substantially or eliminate a competitor. In addition, section 35 prohibits the granting to a purchaser of an allowance for advertising purposes that is not offered on proportionate terms to competing purchasers.

A supplier, or a person engaged in a business that relates to credit cards, is prohibited under section 38 from attempting to influence upward or discourage the reduction of the price at which another person supplies or advertises a product; or from refusing to supply anyone because of that person's low pricing policy. Also prohibited is any attempt to induce a supplier to refuse to supply any person because of that person's low pricing policy. If a supplier indicates a retail price in an advertisement for a product, the price must be so expressed as to make it clear to any person to whose attention the advertisement comes that the product may be sold at a lower price. This section does not prohibit a supplier from affixing a price to a product supplied by him or her where the supplier makes no attempt to enforce that price.

(d) *Misleading Advertising and Deceptive Marketing Practices*

All representations, in any form whatever, that are false or misleading in a material respect are prohibited (paragraph 36(1)(a)).

Any materially misleading representation as to the price at which the product is ordinarily sold is prohibited. A representation as to price means the price the product ordinarily sells for in the market area, unless specified to be the advertiser's own selling price (paragraph 36(1)(d)).

When a person clearly expresses two or more prices shown on a product, its container or wrapper, etc., the product must be supplied at the lower price. This provision does not actually prohibit the existence of two or more prices, but requires that the product be offered for sale at the lower price (section 36.2).

Any advertisement of a product at a bargain price that the advertiser does not have available for sale in reasonable quantities, having regard to the nature of the market, the nature and size of the advertiser's business and the nature of the advertisement, is prohibited. The advertiser will not be liable, however, where he or she can establish that the non-availability of the product was due to circumstances beyond his or her control or that the quantity of the product obtained was reasonable, having regard to the nature of the advertisement, or that a raincheck was offered when supplies were exhausted.

The sale of any product by a retailer at a price higher than the price currently being advertised by the retailer is prohibited, and the seller is liable unless the price advertised was an error and has been corrected immediately (section 37.1).

Any contest that does not disclose the number and approximate value of prizes or important information relating to the chances of winning in the contest, that does not select participants or distribute prizes on the basis of skill or on a random basis, or in which the distribution of prizes is delayed, is prohibited (section 37.2).

Other misleading advertising and deceptive marketing practices provisions relate to performance claims, warranties, tests and testimonials, and pyramid and referral selling schemes. There are also various exclusions and limitations applicable to the provisions as well as various defences.

(e) *Penalties*

The offences in Part V, other than misleading advertising and deceptive marketing practices, are indictable. Section 32.1, which involves foreign directives to a Canadian affiliate to give effect to a conspiracy in restraint of trade outside Canada, provides only for a monetary penalty in the discretion of the court since only companies may be prosecuted. Section 32, which prohibits conspiracy in restraint of trade, provides for maximum penalties of $1 million or five years imprisonment or both. In the remaining provisions, the maximum term of imprisonment is two years or five years, as the case may be, or an unlimited fine at the discretion of the court. The discretion with respect to the monetary penalty is either stated expressly in the section or may be determined by reference to the Criminal Code when only a maximum term of imprisonment of two years or five years, as the case may be, for indictable offences is set out.

Offences in relation to misleading advertising and deceptive marketing practices, with three exceptions, may be prosecuted by way of summary conviction or on indictment. Where proceedings are by way of summary conviction the maximum penalties that may be imposed are $25 000 or one year imprisonment or both. In the case of proceedings by indictment, the maximum penalties are an unlimited fine at the discretion of the court or five years imprisonment or both. The three exceptions are double ticketing, bait and switch selling and sale above advertised price, which may be prosecuted only by way of summary conviction. In the latter two the maximum penalty is $25 000 or one year imprisonment or both, while in the case of double ticketing it is $10 000 or one year imprisonment or both. Where proceedings for any of these offences are instituted by way of summary conviction, charges must be laid within two years.

2. Civil Reviewable Matters and Remedies under Part IV.1 of the Act

Part IV.1 of the Act applies to certain specified situations that, although not prohibited, are capable of being desirable or undesirable depending upon the particular facts of the case. The Part therefore provides that where the situation comes within the criteria set out, the

Director, if he considers that action is warranted, may make application to the Restrictive Trade Practices Commission for an order as provided in the relevant section. The Commission may, after affording the parties an opportunity to be heard, make remedial orders if appropriate.

—Refusal to deal. This provision applies where a person is substantially affected in his or her business by the refusal, the person is willing and able to meet the usual trade terms of the supplier, the product is in ample supply, and the inability to obtain supplies of the product results from insufficient competition. In such cases the Commission may order that the person be supplied or recommend to the Minister of Finance a reduction in customs duties (section 31.2).

—Consignment selling introduced by a supplier who ordinarily sells the product for resale for the purpose of controlling dealer prices or discriminating in price. The Commission may order the supplier to cease the practice (section 31.3).

—The practices of exclusive dealing, tied selling and market restriction. Exclusive dealing occurs when a purchaser is required to deal only or primarily in particular products or to refrain from dealing in specific products. Tied selling occurs when the sale of one product is tied to the sale of another. Market restriction occurs when a supplier, as a condition of sale, imposes restrictions as to the market in which his or her customer may deal. Where any of these practices is engaged in by a major supplier or is widespread in a market and competition is or is likely to be lessened substantially, the Commission may order a supplier to cease or modify such practice (section 31.4).

—The implementation in Canada of foreign judgments, decrees, orders or other processes adversely affecting competition, efficiency or trade. The Commission may prohibit such implementation in whole or in part (section 31.5).

—The making of a decision in Canada as a result of a foreign law or directive adversely affecting competition, efficiency or trade. The Commission may prohibit implementation in whole or in part (section 31.6).

—The making of a decision in Canada as a result of a communication from a person abroad where the communication is to give effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in violation of section 32 relating to combinations unduly lessening competition. The Commission may prohibit implementation. This section may not be used against a company where proceedings have been commenced against it under section 32.1 (section 31.6).

—Refusal by a foreign supplier to supply a person in Canada by reason of the exertion of buying power outside Canada by another person. The Commission may order any person in Canada on whose behalf the buying power was exerted to sell the product at cost to the person refused, or not to deal in the product (section 31.7).

When the Commission sits under Part IV.1, the orders it may issue are binding upon the persons to whom they are addressed. Failure to comply with such an order is an offence under section 46.1 of the Act that may be prosecuted either on indictment or by way of summary conviction and is subject to a fine, imprisonment or both.

The remaining provisions of the Act are mainly concerned with procedure, administration, evidence and enforcement.

3. Procedures

The provisions of the Combines Investigation Act are applied by the Director of Investigation and Research, the Restrictive Trade Practices Commission and the courts.

(1) *Initiation and Conduct of Inquiries*

An inquiry under the Act is most frequently commenced by the Director when, through an informal complaint or otherwise, he has reason to believe that there has been a violation of

the Act or that grounds exist for the Commission to make an order under Part IV.1. Less often the Director receives a formal application for an inquiry from six persons in the form of a statutory declaration, and there is provision for the Minister to direct that an inquiry be undertaken.

Once an inquiry has begun an application may be made pursuant to section 443 of the Criminal Code for the issuance of a search warrant authorizing the search of premises and the seizure of evidence pertaining to the inquiry. The Director may, under certification of a member of the Restrictive Trade Practices Commission, require anyone to make written returns of information pertaining to the matter under inquiry. The Director may also apply to the Commission under section 17 for an order that any person be examined under oath.

The Director may, at any time, discontinue an inquiry that does not justify further inquiry. He is required, however, to report on any such discontinuance to the Minister. Further, where the inquiry resulted from a formal application he must notify the complainants of the reasons for the discontinuance.

Where the Director believes that an offence has been or is about to be committed, he may remit the evidence obtained in an inquiry to the Attorney General of Canada for such action as the latter may decide to take, or he may pursue the matter before the Restrictive Trade Practices Commission.

(2) *The Restrictive Trade Practices Commission*

As a result of the 1976 amendments, the Commission has a dual role. Its first role is to act as a fact-finding and reporting body with respect to section 18 statements of evidence and section 47 general inquiries. In such matters it holds hearings at which arguments are submitted, persons against whom an allegation has been made in the statement are allowed full opportunity to be heard in person or by counsel, and the case is argued. The Commission then makes a report in writing to the Minister of Consumer and Corporate Affairs. The report is required to be made public within 30 days of its receipt. Hearings in connection with these inquiries are held in private, unless the Chairman of the Commission orders otherwise. In recent years, only a few cases have been brought to the Commission for a report (chiefly general or research inquiries) because the public interest is best served by sending the evidence, if a suspected offence is involved, direct to the Attorney General of Canada for prosecution. A list of the recent reports of the Commission and a summary of the resultant action is found in Appendix I. Proceedings completed in cases referred directly to the Attorney General are summarized in Appendix II.

The second role of the Commission is to act, pursuant to Part IV.1 of the Act, as a court of record to receive applications from the Director to review various situations that may be undesirable and to make remedial orders binding upon persons to whom they are addressed. In these proceedings the Commission is acting in a judicial capacity and is required to give reasonable opportunity to be heard to affected parties at hearings held in public unless in some particular situation the Chairman orders them closed.

(3) *Enforcement*

At any stage of an inquiry, whether or not the matter has been referred to the Commission and a report made thereon, the Director may submit the evidence gathered in the inquiry to the Attorney General of Canada for such action as he may be pleased to take. Each offence provision of the Act specifies whether the matter is to be prosecuted by way of summary conviction or on indictment and sets out the amount of any fine or the length of imprisonment that may be imposed. The Act also provides that prosecutions for indictable offences and certain other proceedings under the Act may be conducted in the Federal Court — Trial Division, thereby giving it concurrent jurisdiction with provincial superior courts of criminal jurisdiction, and that an appeal from a judgment of this court lies to the Federal Court of Appeal and from that court to the Supreme Court of Canada. The consent of an individual accused is, however, required before prosecution may be instituted in the Federal Court — Trial Division.

(4) *Special Remedies*

In addition to the penalties set out in Part V of the Combines Investigation Act, the Act provides certain special remedies.

(i) *Proceedings under Section 29.1*

Under section 29.1 of the Act, an interim injunction may be issued to prevent any person from doing things forbidden by the Act pending adjudication of the matter. Such an injunction may only be issued if the court is satisfied that irreparable damage will otherwise result.

(ii) *Orders of Prohibition under Section 30*

Under subsection 30(1) of the Act, a person convicted of an offence under Part V may be prohibited from the continuation or repetition of the offence or from doing anything directed towards such continuation or repetition. Where a conviction is with respect to a merger or monopoly, the order may require action to dissolve the merger or monopoly. Subsection 30(2) provides that an order may be granted in proceedings commenced by information of the Attorney General of Canada, or the Attorney General of a province, without any prosecution having been instituted where it appears that a person has done, or is likely to do, anything constituting or directed toward the commission of an offence under Part V. By virtue of subsection 30(6), a court may punish any person who contravenes or fails to comply with an order under section 30.

(iii) *Damages*

Under section 31.1 of the Act, a person who has suffered loss or damage as a result of conduct contrary to any provision of Part V of the Act, or as the result of the failure of any person to comply with an order of the Commission or a court under the Act, may sue for and recover damages equal to the amount suffered by him, together with the costs to him of the investigation and proceedings. To facilitate such private action, it is also provided that the record of any proceedings in which a person was convicted of an offence arising from any such conduct or failure is proof that the person against whom the private action is brought engaged in that conduct, and any evidence given in the proceedings as to the effect of such conduct on the plaintiff is evidence in the private action.

(iv) *Patent and Trade Mark Rights*

Section 29 of the Act provides that the Federal Court may, on the information of the Attorney General of Canada, make orders to correct misuse of patent or trade mark rights. Such orders may revoke a patent or cancel the registration of a trade mark, or prescribe lesser remedies where such rights have been used to restrain trade or injure competition in the manner described in that section.

(v) *Tariff Adjustment*

Section 28 of the Act empowers the Governor in Council to reduce or abolish the tariff on an article where it appears, as the result of an inquiry under the Act or from judicial proceedings taken pursuant to the Act, that a combination, merger, or monopoly to promote unduly the advantage of manufacturers or dealers at the expense of the public has existed and has been facilitated by the duties of customs imposed on the article.

(5) *Representations before Regulatory Boards*

Section 27.1 of the Act expressly authorizes the Director to make representations to and to call evidence before federal boards, commissions or other tribunals in order to draw to their attention considerations relevant to the maintenance of competition in connection with matters being heard before them. The Director also intervenes before provincial regulatory boards with the permission of such boards or at their request.

4. Information and Compliance Program

While the enforcement of the Combines Investigation Act depends largely upon investigation of complaints of violations received from consumers and members of the business community and from press reports, careful attention is given to the encouragement of voluntary compliance. It has been referred to in earlier annual reports as the program of compliance and is intended to be a vigorous and sustained program involving education and explanation, discussion of business problems and the giving of opinions concerning the application of the Act. As part of the program, members of the business community are invited to discuss their problems before they decide to introduce policies that might prove to be in conflict with the Combines Investigation Act. The Director of Investigation and Research has no authority to regulate business practices or to decide the law, but he tries to assist members of the business community to avoid coming into conflict with the Act by studying matters they submit to him and indicating to them whether or not the adoption of proposed plans would lead him to launch an inquiry. Businesses who consult him are not bound by any opinion he gives and remain free to adopt practices that they are prepared to have tested before the Restrictive Trade Practices Commission and the courts. The Director, similarly, cannot bind himself or his successors by such opinions and always makes it clear that the matter would be subject to review if there should be any change in the details of the proposed plan or its method of implementation. During the year, 23 formal compliance opinions were provided (not including Marketing Practices) and approximately 100 informal discussions were held.

As part of the information program, senior staff members undertook speaking engagements before trade associations and other business societies, professional associations and other groups concerned with the Act during the year. In addition the Bureau responded to approximately 1 300 requests for information relating generally to the application and scope of the Act. Persons who wish to obtain general information relating to the activities of the Bureau of Competition Policy or on the Combines Investigation Act can request it from the Office of Enforcement Operations of the Bureau of Competition Policy or from the appropriate enforcement branch of the Bureau. Information respecting the marketing practices provisions of the Act can be obtained from the head office of the Marketing Practices Branch in Hull or any of the regional and district offices of the department. A number of publications and speeches are available to the public; a list of the more recent is provided in Appendix VI. The Marketing Practices Branch publishes a quarterly *Misleading Advertising Bulletin* containing information relating to the provisions of the Act that it administers.

CHAPTER II

CURRENT DEVELOPMENTS

1. The State of Competition

Legislation

On December 17, 1985, Bill C-91, the Competition Tribunal Act and the Competition Act, was introduced in the House of Commons. The Bill constituted comprehensive proposals to amend the Combines Investigation Act. Bill C-91, which reflects the accumulated knowledge acquired in the preparation of the previous legislative proposals, was the result of lengthy and thorough consultations with major interested parties.

Bill C-91 received Second Reading on April 10, 1986, and was referred to a Legislative Committee. On June 5, 1986, the Bill was passed by the House of Commons. Subsequently the Bill was introduced into the Senate and on June 17, 1986, was passed by the Senate and received Royal Assent. The Bill was proclaimed in force June 19, 1986, except for sections 80 to 95 of the Competition Act providing for the prenotification of large merger transactions, which will be proclaimed at a later date.

The Competition Act contains a purpose provision outlining the general thrust of competition policy, namely, promoting economic efficiency and Canada's international competitiveness while ensuring fairness in the marketplace for consumers and small- and medium-size business.

The Competition Tribunal Act creates a new adjudicative body, the Competition Tribunal, which replaces the Restrictive Trade Practices Commission, to hear all civil reviewable matters under the Competition Act.

The new Competition Tribunal is composed of up to four judges from the Federal Court — Trial Division and up to eight lay members. The Governor in Council may establish an advisory council drawn from the areas of business, economics and public affairs to advise the Minister of Consumer and Corporate Affairs on the appointment of lay members to the Tribunal. One of the judicial members chairs the Tribunal. The Tribunal has a strictly adjudicative function and is not empowered to initiate investigations or conduct research inquiries. Appeals from decisions of the Tribunal are heard by the Federal Court of Appeal as if they were decisions of the Federal Court — Trial Division. However, leave will have to be granted for appeals on questions of fact.

Under the new law, merger transactions are now subject to a review on a civil, rather than criminal, law standard. The statutory test is whether a merger substantially lessens competition. To provide guidance, the law includes a list of factors for the Tribunal to consider in the assessment of a merger, such as the availability of substitutes, the existence of barriers to entry and the degree of foreign competition. The merger law also provides a defence in situations where the gains in efficiency that would result from a merger more than offset the costs arising from the lessening of competition.

New provisions (to be proclaimed at a later date) require prenotification to the Director for all merger proposals involving companies with combined revenues or assets of more than $400 million and when the transaction exceeds the threshold of $35 million in sales or assets. Parties are required to wait seven, ten or twenty-one days, depending on the circumstances and information requirements, during which the proposed transaction cannot be completed. This process allows the Director to review large transactions and initiate proceedings to block harmful mergers before they are completed.

The new civil provision dealing with abuses of dominant position empowers the Tribunal to issue remedial orders against dominant firms which engage in anti-competitive practices that substantially lessen competition. To ensure that the law does not impede aggressive, pro-

competitive behaviour, the Tribunal is required to consider whether a lessening of competition occurs as a result of the firm's superior competitive performance.

The new delivered pricing provision deals with discriminatory delivery practices engaged in by major suppliers or where the practice is widespread in the market. Under this provision, which applies only to articles, the Tribunal is empowered to order a supplier to allow a customer who has been denied an advantage, or a person seeking to become a customer, to take delivery of an article at the same location on the same trade terms that the supplier delivers to another customer.

The new legislation also contains amendments clarifying and strengthening the criminal conspiracy prohibition. A new subsection makes it clear that the existence of an agreement to lessen competition may be proven from circumstantial evidence with or without direct evidence of communication among or between the parties. Another subsection stipulates that the proof of intent is met if it is shown that the parties to the conspiracy intended to enter into the conspiracy or agreement, and that further proof that they intended to lessen competition unduly is not required. The maximum fine is raised from $1 million to $10 million to indicate the seriousness of conspiracy violations. Finally, the export exemption from the conspiracy prohibition has been clarified to enable domestic firms to compete more effectively in international markets where export consortia may be necessary to meet competition emanating from other jurisdictions.

A new civil provision provides for the Competition Tribunal to register specialization agreements which can be justified on efficiency grounds. If the parties to the agreement demonstrate that the agreement was entered into voluntarily and that it is likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any lessening of competition, then it is exempted from the conspiracy and exclusive dealing provisions.

The Competition Act removes Crown immunity for agent Crown corporations engaged in commercial activities in competition with other firms. This amendment does not affect the exemption for regulated state enterprises or the regulatory activities of Crown corporations such as marketing boards.

Bank mergers and agreements among banks are brought within the ambit of the Competition Act rather than the Bank Act. The Director now has the responsibility for investigating bank mergers and bank agreements instead of the Inspector General of Banks. However, the Minister of Finance will still have the power to exempt a bank merger or an agreement among banks from the Competition Act on the basis of financial policy considerations.

Finally, the Competition Act provides completely revised investigatory powers for the Director of Investigation and Research. The powers include a search and seizure power for both criminal and civil proceedings, the power to order hearings before a presiding officer, the production of documents and returns of information under oath. To satisfy the due process standards required by the Canadian Charter of Rights and Freedoms, each of these powers is now subject to the supervision of an independent judicial authority to provide for suitable safeguards against the abuse of such powers. Consequently, all warrants and subpoenas are to be issued by a judge.

Market Access: The Canada/United States Trade Negotiations

With the gradual erosion of the multilateral trading system in recent years and the growing threat to Canada's access to export markets, including to its largest market, the United States, Canada has had to consider trade policies to enhance and secure access for its exports while reinforcing the gains achieved through multilateral trade agreements such as the GATT. At the Québec Summit in March 1985 the governments of Canada and the United States announced their intention to pursue a freer trading relationship, and each government subsequently formally notified the other of its desire to engage in bilateral trade negotiations.

A substantial reduction in tariffs and, perhaps more importantly, in non-tariff barriers such as government procurement practices, investment policy, regulation of trade in services, import control aspects of intellectual property rights, and contingency measures of protection

(e.g. antidumping, countervail and safeguard actions) would sharpen competition and lead to an improved use of Canadian resources. Further, since Canada's markets are relatively small and tend to be overly concentrated, a trade agreement with the United States would broaden the commercial opportunities offered to Canadian business, and through heightened competition, would increase the tendency toward specialization and rationalization of Canadian production, thereby enhancing our competitiveness internationally. In view of the potential positive impact on both competition and efficiency, the Bureau of Competition Policy has been active in governmental work to establish an optimum negotiating strategy for maximizing the benefits expected from freer bilateral trading relations with the United States.

Since it is anticipated that a freer trading relationship will lead to increased transborder economic activity and accelerate movement towards an integrated North American market, many questions arise about how best to deal with substantive and jurisdictional differences and conflicts between Canadian and American competition and trade laws. For example, the issue of harmonization of Canadian and U.S. competition laws will need to be assessed with a view to determining the possibility and the desirability of achieving uniform legal standards applicable to transborder transactions. Similarly, the question of overlap between competition/antitrust laws and trade laws in some areas (e.g. price discrimination, predatory pricing) will command serious attention as Canada attempts to obtain some form of exemption from U.S. unfair trade laws, either through special treatment in their application or the reciprocal suspension of such laws.

These questions and other more specific issues, such as government procurement, investment policy and trade in services, present major challenges and opportunities to the future performance of the Canadian economy and the laws which seek to promote its efficiency. The Bureau of Competition Policy, therefore, expects to continue its involvement in the freer trade debate for the duration of the forthcoming negotiations.

Regulatory Reform

Previous annual reports have commented on the Bureau's role in regulatory reform initiatives in telecommunications, transport and financial markets. These initiatives have continued and are commented on in the relevant Branch chapters. There are also broader implications for the state of competition in Canada.

Traditional forms of regulation in key sectors of the economy are currently being subjected to a critical review. The present regulatory reform movement is sustained by a number of factors including: the speed of technological change, innovation in equipment and in the methods of conducting business, the recognition that Canada must compete in an international economy and that regulatory institutions must keep pace with changes in this dynamic setting and, finally, the efforts by federal and provincial governments to reduce expenditure and place greater reliance on the private sector. Both the Macdonald Commission and the Nielsen Task Force focused attention on this issue in Canada.

In its August 1985 Report, the Macdonald Commission recommended that:

> government undertake to review and reform the regulatory framework as a whole. Regulatory agencies should be subject to closer Parliamentary scrutiny than they are at present, and their mandates should be more clearly and closely defined. Whenever possible, regulatory activity should be subject to a "sunset clause": that is, it should be limited in advance to a specific term.

On March 6, 1986, the Minister responsible for Regulatory Affairs, the Honourable Ray Hnatyshyn, announced two new major initiatives in the government's regulatory reform strategy: a *Citizens' Code of Regulatory Fairness* and a *Regulatory Program Review Package*. The latter was based on the Ministerial Task Force on Program Review and sets out a number of specific reform initiatives affecting regulatory programs in several federal departments and agencies. These initiatives are to supplement and complement a large number of regulatory reform initiatives already complete or underway.

The reform of regulation opens up the possibility of greater competition in the economy. Competition and the reliance on market forces is the principal alternative form of economic organization in Canada. That is not to say that competition and regulation are mutually exclusive systems. In some sectors it may be concluded, upon review, that competition is the more effective vehicle for promoting economic growth and efficiency and, accordingly, regulation will be removed. In other areas, the boundary separating competition and regulation may be redefined so as to place a greater reliance on competition within a partially regulated environment. Here, competition also has an important role to play in providing a constant and automatic pressure for the improvement of performance by business firms.

The Bureau will continue to make a contribution to the ongoing critical assessment of regulation. The objectives will be to modify regulation, where appropriate, so that it is least restrictive of competition and to ensure that the scope and application of the Combines Investigation Act in the new regime are as clear and unambiguous as possible.

Nielsen Task Force

The Ministerial Task Force on Program Review, in one of its study team reports, examined the effectiveness of the Bureau in administering the provisions of the Combines Investigation Act and in promoting policies which improve the functioning of a competitive and dynamic market economy.

The Study Team Report entitled *Management of Government — Regulatory Programs* outlined several options for the government to consider with respect to the activities of the Bureau and made the following recommendations:

(a) develop a comprehensive and proactive public education program on the benefits of the maintenance of competition on economic development, job creation, viability of small and medium-sized enterprises and entrepreneurial initiative;

(b) develop a proactive compliance program for the entire Bureau modelled along the lines of the Marketing Practices Branch; and

(c) increase the use of negotiated settlements such as prohibition orders and inquiry suspension agreements.

At the end of the fiscal year, in response to these recommendations, the Director was examining a number of initiatives to expand the Bureau's public education program, to strengthen the Bureau's existing Program of Compliance and to develop a strategy for increasing the use of negotiated settlements in inquiries under the Act.

In addition, the Task Force identified potential overlap and substitutability between the Bureau's enforcement of the deceptive marketing practices provisions of the Act and some of the information and misrepresentation regulations administered by the Bureau of Consumer Affairs of the department. A study was commenced at the end of the fiscal year to examine whether a greater level of integration would be desirable between these activities.

In addition to these Bureau-specific matters, the Study Team made recommendations which led to the regulatory reform initiatives referred to in the previous section. The Study Team reports comprise several volumes which detail areas for attention. Included are analyses and recommendations for sectors of the economy where the Bureau has taken an active interest in the past, including communications, transport and agriculture. The program review has been so wide-ranging and comprehensive that, as a result, the environment for program reform has changed from one of questioning a need for change to one of identifying specific initiatives.

For example, the Study Team Report on the *Management of Government — Program Review* also reviewed the management, operations, and effectiveness of federal agriculture programs. It identified a need to promote improved accountability, cost effectiveness and market responsiveness of agriculture policies, particularly in respect to national supply management schemes, risk management programs (income stabilization), inspection programs, and programs to assist in the orderly marketing of agricultural products. It was concluded that the

adoption of new policies lowering barriers to interprovincial and international trade, reducing the instances of retaliatory actions under the GATT, and constraining unreasonably high prices will stimulate entrepreneurial initiatives by producers and processors and will result in a more efficient and productive agricultural sector.

Macdonald Commission

In September 1984 the Director made a submission to the Royal Commission on the Economic Union and Development Prospects for Canada (the Macdonald Commission). Fundamentally the submission argued that greater reliance be placed on market forces to rejuvenate Canadian entrepreneurship and dynamic efficiency of the economy.

The Commission's report, which was released in September 1985, stressed freer trade, greater emphasis on market-oriented industrial policies and less reliance on direct government intervention designed to promote the growth of target sectors or to protect declining industries.

The Commission also recommended a broader role for competition policy in promoting economic development and growth. It suggested that the Director play a more proactive role in developing policy and be more concerned with reform of the fundamental conditions that determine the state of competition in the Canadian economy. Although the report pointed out that trade liberalization and deregulation should reduce the need for enforcement action, it did stress that competition policy has an important role to play in situations where foreign competition and threat of entry are not major factors.

The Commission's specific competition policy recommendations were compatible with the proposed amendments to the Combines Investigation Act as contained in Bill C-91. For example, the Commission recommended that civil remedies should be available to prohibit horizontal or vertical mergers that are contrary to the public interest. It argued that mergers, monopolistic behaviour and related matters such as specialization agreements should be adjudicated by an administrative tribunal with right of appeal, on law, jurisdiction and natural justice, to the courts.

The Commission's report also argued that the export exemption to conspiracy should be retained, and that large corporations and corporate groups should disclose additional information on their operations. Under Bill C-91 proposals, the export exemption to conspiracy will be broadened to enable Canadian firms to compete more effectively in the international market through fewer constraints on entry into export consortia. Also, the proposed prenotification provision for large mergers, requiring parties to a proposed transaction to file information requirement forms with the Director, will substantially enhance the extent and nature of information available on large corporate groups.

The Commission also examined the role of Crown corporations in the Canadian economy. It recommended privatization of Crown corporations except in instances where government ownership is clearly and unambiguously justifiable. While stating that scrutiny of the role of Crown corporations is a logical extension of competition policy, the Commission did not address the extent to which they should come under the Combines Investigation Act. Crown corporations that are not agents of the Crown are bound by existing legislation; however, agent Crown corporations are not. Under the new legislation, agent Crown corporations engaged in commercial activity, in competition with other firms, will be subject to the same rules in the market place.

The Commission further recommended that consideration be given to exploring alternatives to the current *per se* criminal provision for price maintenance. However, amendments have not been considered necessary by the Bureau because the statutory defences available under the current provision address the arguments against the *per se* rule.

Finally, an additional Commission recommendation, which was not reflected in the new legislation because of federal/provincial jurisdictional issues, related to the exemption of self-regulated professions (such as law and medicine) from the provisions of the Act if their conduct is pursuant to authority delegated to them by provincial legislation. The Commission viewed this as a shortcoming of the Act which it was important to overcome.

Footwear Import Quotas — Reference to the Canadian Import Tribunal

Since the beginning of the 1970s, comparative advantages and the world pattern of production and trade in the footwear sector have undergone substantial change. As a result, production has shifted from high to low wage economies and, consequently, imports from the latter have captured an increasingly large share of the markets in high wage countries. In the mid-seventies, many high wage countries, including Canada, reacted to accelerating import penetration by invoking temporary import restraint measures under the authority of Article XIX of the GATT. The purpose of such measures was to insulate domestic industry from the full force of international competition while it restructured or otherwise adjusted to those forces. In Canada, although subject to periodic review, such temporary measures of restraint have been in effect almost continuously since 1977.

Most recently, the Canadian footwear quota measures were due to expire in November 1984. However, they were extended for one year in order to allow the then Anti-dumping Tribunal (now the Canadian Import Tribunal) to conduct a general inquiry into the state of the Canadian footwear industry and its need for continued quota protection. More particularly, the terms of reference given the Tribunal directed it to consider: (i) to what degree the industry had restructured to become competitive with imports; (ii) to what extent the quotas had affected consumer prices and the operations of the non-manufacturing segment of the industry; and (iii) the future competitive prospects for the industry. If the Tribunal found that imports would continue to seriously injure domestic producers, it was directed to recommend a progressive phase-out formula, not to exceed a three-year period, for renewed protection.

In view of the breadth and competitive focus of this mandate, the Director made his first intervention in a general inquiry proceeding by the Tribunal in order to present the competition policy perspective on the costs of protection. In essence, the Director's submission argued that quotas restrict supply and raise prices; limit product choice and availability for importers, retailers and consumers; inhibit the efficient allocation of resources; introduce market rigidity and impede adjustment to changing conditions; and, erect artificial barriers to importer and retailer entry. As a result, quotas on footwear imports reduced competition in the domestic market and imposed a substantial net cost on the Canadian economy. Moreover, the quota regime caused a substantial redistribution of income among consumers, with low-income consumers bearing the brunt of the costs. The submission concluded by recommending that quota protection be allowed to lapse entirely so as to restore the discipline of market forces and to eliminate the substantial costs associated with artificially limiting supply.

The Tribunal concluded its inquiry in June 1985 and released its findings in early July. While the Tribunal found evidence of the adverse effects noted by the Director, its major conclusion was that much of the industry had undergone considerable adaptation and adjustment and had returned to a state of economic health. Significantly, the return to health was attributed more to the industry's response to market pressures than to its reliance on special (quota) measures of protection. In keeping with this conclusion, the Tribunal recommended that protection for the healthy segments of the industry was no longer warranted, while those segments which were not internationally competitive and remained vulnerable to injury from foreign competition should benefit from a period of progressively diminishing protection.

Following extensive consultation with all interested parties, the government accepted the major elements of the Tribunal's recommendations. Effective November 30, 1985, quantitative restraints on imports in competitive sectors were allowed to expire, while restraints on imports in the vulnerable sectors (mainly women's and girl's dress and casual footwear) were renewed. The renewed quota restraints will be phased out progressively at annual rates of 6, 8 and 10 percent, respectively, for each of the next three years. At the end of the period the footwear industry will be expected to operate in a fully competitive market, although it will continue to benefit, when appropriate, from tariff protection and the availability of anti-dumping and countervail legislation.

The Automobile Industry

As noted in earlier reports, the Director has had an ongoing interest in the implications for competition and the costs imposed on consumers resulting from the Japanese voluntary export restraint agreements for automobiles. During the period under review, the governments of Canada and Japan reached an "understanding" that Japan would avoid disruption of the Canadian automobile industry by limiting exports to Canada to approximately 18 per cent of the anticipated market.

As part of its participation on the Working Party on Competition and Trade within the OECD Committee of Experts on Restrictive Business Practices, the Bureau commissioned a study (see Chapter VIII) to quantify the costs to consumers of the restraints on Japanese cars. The study concluded that there were significant costs (ranging between $200 million and $900 million in 1985) imposed on consumers as a result of the restraints. These costs were significantly greater than any benefits the domestic industry obtained from the restraints. At best, the restraints generated less than 1 000 jobs, mostly in the U.S., at a cost to Canadian consumers of over $200 000 per job. The cost per Canadian job created was probably in excess of $1 million. It was also found that the impact of the restraints was noticeably softened by the unrestrained imports of Hyundai automobiles from South Korea.

The major rationale for continuing the restraints was to encourage Japanese investment in the Canadian automobile industry. Recent investment announcements by Japanese automobile manufacturers appear to satisfy this objective. Consequently, the ongoing protection of this industry must be weighed against the considerable costs imposed on consumers and the longer-term impact on efficiency in this sector.

Financial Markets

Financial markets have experienced rapid and fundamental changes in recent years that increasingly challenge the effectiveness and validity of the existing regulatory structure. The situation has been aggravated somewhat by the failure of the Canadian Commercial and Northland banks in 1985. A number of regulatory policy review committees established to identify the appropriate regulatory and legislative response to the prevailing pressures for change have recently published their proposals. Concerns addressed by the review committees pertain fundamentally to the three basic objectives underlying government regulation of financial institutions: depositor protection, system stability, and competition and efficiency. While these regulatory objectives are highly interdependent and each policy review generally dealt with all three, the Bureau's primary interest in current reform proposals concerns issues of competition and efficiency.

In April 1985 the federal Department of Finance issued a Green Paper, *The Regulation of Canadian Financial Institutions: Proposals for Discussion*, followed by a Technical Supplement in June 1985. The Ontario Government Task Force on Financial Institutions released its Final Report in December 1985. The proposals contained in these documents are very similar. They call for increasing competition and enhancing solvency by allowing financial institutions to diversify by gaining access to a wider range of lending and investment powers through establishment of upstream Financial Holding Companies (FHCs). An FHC could engage in a wide range of financial activities, including commercial banking through establishment of a closely-held schedule C bank. While not allowing full functional integration within the financial sector, the proposals would allow cross-ownership and enable each subsidiary of an FHC to market (network) the products of affiliated financial institutions. In order to prevent self-dealing abuses arising from non-arm's length transactions (NALTs) among financial institutions and their affiliates, the Green Paper proposed a pre-emptive ban on NALTs, whereas the Ontario Task Force recommended a selective ban prohibiting those transactions for which a price cannot be independently determined.

The *Final Report of the Working Committee on the Canada Deposit Insurance Corporation* (Wyman Report) was also released in April 1985. The Committee's terms of reference required it to examine and make recommendations on the operations and structure of the

Canada Deposit Insurance Act. Among the key proposals made by the Committee was the recommendation to enhance the role of the CDIC in the regulation of financial institutions, giving it the power to grant/terminate deposit insurance, and to step in to take action when other regulatory agencies were not effectively doing their job. The Committee also recommended the adoption of a co-insurance scheme for deposit insurance, whereby CDIC would insure 90 percent of the first $100 000.

The proposals of the Wyman Report and the Green Paper were examined by the House Standing Committee on Finance, Trade and Economic Affairs. The Committee, chaired by Mr. Don Blenkarn, released its report in November 1985. The Blenkarn Report rejects the Wyman proposal for increasing the deposit insurance limits and for implementation of a co-insurance deposit scheme. It also rejects many of the Green Paper proposals, such as diversification through a mandatory upstream FHC and the schedule C bank concept. Rather, the Blenkarn Report recommended that financial institutions be allowed to diversify through both upstream and downstream holding companies as well as increased in-house lending and investment powers. It also called for the creation of the National Financial Administration Agency (NFAA), which would consolidate and assume responsibility for supervisory and insurance functions of the Office of the Inspector General of Banks, the Department of Insurance and the Canada Deposit Insurance Corporation. The Board of Directors of the NFAA would consist of federal, provincial, and industry representatives, one of which would be appointed by Consumer and Corporate Affairs Canada.

In October 1985 Supreme Court Justice Willard Estey was appointed as a one-man commission of inquiry to examine the circumstances leading to the cessation of operations of the Canadian Commercial and Northland banks and to make recommendations. Mr. Justice Estey is expected to release his report in June 1986.

The Senate Standing Committee on Banking, Trade and Commerce has also been holding hearings regarding the Green Paper reform proposals. It is expected to publish its conclusions in May 1986.

Following the release of the conclusions of the Estey Commission and the Senate Standing Committee, it is expected that the Department of Finance will make public new reform proposals and that legislation will be introduced into Parliament before the end of the year.

The Director participated in the hearings of both standing committees and made a written submission to the Ontario Government Task Force. Details on the thrust of the proposals of the Director's submissions and the extent to which the Bureau's views have been reflected in the various review committee recommendations are contained in Chapters VI and VIII of this Report.

Privatization of Public Corporations

The privatization of commercial public corporations has recently gained increased credence as an important economic policy option for improving economic efficiency through greater reliance on private entrepreneurial forces. The Federal Government and several provincial governments have publicly committed themselves to privatizing a significant number of public corporations operating in a variety of key markets, including transportation, telecommunications, mining, lumber, oil and gas.

Privatization is a complex issue that raises a wide range of economic policy considerations. Privatization, without a parallel effort to enhance the role and influence of market forces through the application of competition policy, may prove counter-productive from the point of view of economic efficiency.

For example, the transition of government-owned corporations from the public to the private sector may result in the creation or entrenchment of large private monopolies, increase the incidence and scope of regulation, increase substantially the level of market and/or corporate concentration and create strong incentives for, or facilitate, anti-competitive agreements or practices. As a result, it is extremely important that a transfer to the private sector of any

public corporation be crafted in a fashion which ensures that overall social welfare is improved, or at least not diminished. In this regard, any privatization initiative will require a full and explicit consideration of competition policy issues if economic benefits are to be reaped to their fullest.

Recognizing the potential benefits and pitfalls associated with privatization, and the importance of competition policy and the Combines Investigation Act as tools for promoting market efficiency through competition, the Bureau of Competition Policy has been actively involved in the Government's privatization initiatives and process by participating in a special working group and attending numerous meetings at various governmental levels. The goal has been to ensure that competition policy considerations are taken into full account by policy-makers responsible for the privatization of specific Crown properties.

Competition in the Procurement Process

This issue was highlighted in the 1985 Annual Report at pages 12 and 13, in which it was stated that the Bureau of Competition Policy intended to embark on a program to encourage private and public purchasing officials to take full advantage of competition in their procurement policies and procedures.

To this end, officials of the Bureau delivered a number of addresses and conducted several seminars with various purchasing organizations. This initiative commenced with a series of seminars with senior officials and procurement officers with Supply and Services Canada. Subsequent presentations were made to, among others, the Ontario Association of School Business Officials, the Ontario Public Buyers Association, the Ontario Ministry of Natural Resources, the Atlantic Municipal Purchasing Association and the Canadian Bar Association — Construction Law Division.

The Bureau also prepared, at the request of the Nielsen Task Force, a submission on competition and government procurement.

The various presentations and the Nielsen Task Force paper outline a number of general principles that can be followed by government agencies or private companies to improve their tendering processes. These suggestions include making product and project specifications as broad as possible to encourage the greatest number of bidders, expanding bidders lists by seeking out other known suppliers and potential suppliers, keeping the bidding process as secret as possible, avoiding rotational tender awards and discouraging "single" or "sole" sourcing situations.

The speeches and Task Force paper also outline the role procurement officials can play in the prevention and detection of bid-rigging. The practice of bid-rigging is a criminal offence covered by section 32.2 of the Combines Investigation Act. Bid-rigging obviously distorts or perverts normal tendering practices and nullifies the benefits achievable through the competitive tendering process.

The Bureau's presentation on bid-rigging explains the various forms it may take: cover bidding, bid suppression, bid rotation and market allocation. It also details a number of fact situations that point to the existence of bid-rigging and outlines various practices that procurement officials can adopt to make it much more difficult for firms to successfully engage in bid-rigging.

The Bureau continues to devote a significant amount of its resources to the detection and prosecution of bid-rigging. In the next fiscal year, a Bureau official will be addressing the annual meeting of the Purchasing Management Association of Canada, and the Bureau will continue to sensitize private and public purchasing officials to the existence of bid-rigging and its costly effects.

2. Statistics

Table I presents a statistical picture of the work of the Bureau of Competition Policy, excluding work related to misleading advertising and deceptive marketing practices. The

Table I

OPERATIONAL ACTIVITIES OF THE BUREAU OF COMPETITION POLICY (EXCLUDING MISLEADING ADVERTISING AND DECEPTIVE MARKETING PRACTICES PROVISIONS)

	1976-77	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86
1. Number of complaints received	N/A	N/A	N/A	N/A	N/A	381	692	839	1075	1013
2. Preliminary examinations commenced	N/A	N/A	N/A	N/A	N/A	199	218	223	269	237
3. Formal applications for inquiries	7	5	7	7	8	9	8	2	2	8
4. Formal inquiries in progress at the end of the year	73	76	73	78	69	69*	71	58	54	58
5. Inquiries disposed of by reports of discontinuance to the Minister	8	14	16	21	26	20	19	19	12	11
6. Inquiries referred direct to the Attorney General of Canada under section 15	26	23*	14	24	21	33*	24	20	27	21
7. Inquiries closed on the recommendation of the Attorney General of Canada	4	6	6	3	5	6	5	6	4	11
8. Prosecutions or other proceedings commenced	16	24	11	21	6	24	21	16	17	19
9. Applications under Part IV.1	-	1	1	2	0	0	1	0	0	1
10. Formal interventions under section 27.1	3	4	0	3	4	6	4	15	17	15
11. Other representations to bodies dealing with regulatory change	1	1	2	1	0	9	7	8	6	7

* Revised

Table identifies activities during the past year in comparison with other years and has been revised to reflect changes in the Bureau's information system. Some complaints received by the Bureau give rise to very little study; other cases require more attention but are discontinued at an early stage of investigation because, for lack of evidence or other reason, they do not appear to justify further inquiry. Item 1 reflects the total number of complaints received and item 2 identifies the number of preliminary investigations commenced in the year. Item 3 inquiries are initiated under sections 7 and 8 of the Act by formal application of six persons or by direction. Item 4 refers to inquiries which were formally commenced or in which powers to search, to secure information or to examine witnesses have been used. Items 6 to 9 are self-explanatory.

Item 10 includes only those representations made formally by the Director under section 27.1. Item 11 includes all other representations in the nature of interventions such as representations to provincial regulatory bodies.

During the year ended March 31, 1986, 50 cases under the Act (excluding misleading advertising and deceptive marketing practices cases) were considered by the courts. These consisted of 19 proceedings commenced during the year, and 31 proceedings before the courts from previous years. Ten cases related to conspiracy under section 32; four related to bid-rigging under section 32.2; two related to merger or monopoly under section 33; one related to price discrimination under section 34; and thirty-three related to price maintenance or refusal to supply under section 38. Seventeen proceedings were concluded during the year, of which nine resulted in conviction, two resulted in the imposition of Orders of Prohibition without conviction, and six resulted in the acquittal of the accused. Three of the concluded proceedings related to section 32; two related to section 32.2; one related to section 33; and eleven involved price maintenance. Fines totalling $160 000 were imposed during the year. In addition, in relation to the thirty-three cases before the courts at the end of the year, $563 000 in fines was outstanding in five matters that were under appeal or in which proceedings against some accused were still pending. The completed proceedings are listed in Appendix II, showing the products involved, persons charged, the place of trial and details of disposition. Outstanding matters are reported in the relevant Branch chapters.

Statistics of the work relating to misleading advertising and deceptive marketing practices are presented in Chapter VII. During the year ended March 31, 1986, 265 misleading advertising and deceptive marketing practices cases were considered by the courts. These consisted of 158 proceedings commenced during the year and 107 proceedings before the courts from previous years. This includes 22 cases that had received court consideration in previous fiscal years but were under appeal at the start of the year. There were 142 proceedings concluded during the year, 109 of which resulted in convictions and 33 in acquittals, charges withdrawn and other completions of court proceedings that were not convictions. Fines totalling $677 100 were imposed during the year. In addition, in respect of the 122 cases before the courts at the end of the year, $138 670 in fines was outstanding in 10 matters that were under appeal or in which proceedings against some accused were still pending. Completed proceedings are listed in Appendix II and outstanding matters are listed in Appendix IV.

3. Decisions, Reports and Other Matters of Special Interest

(1) *Investigatory Powers*

This year, as in previous years, the courts have rendered several decisions relating to the compatibility of the Director's investigatory powers with the Charter of Rights and Freedoms.

In 1984 the Supreme Court of Canada rendered its landmark decision in *Hunter v. Southam Inc.*,[1] holding that subsections 10(1) and 10(3) of the Act, which authorized the Director or his representatives to enter premises and seize documents, were inconsistent with section 8 of the Charter, which guarantees the right to be secure against unreasonable search or seizure, and were therefore of no force or effect.

Since Southam challenged the search powers contained in the Act, a number of courts have ruled on the admissibility in evidence or other disposition of documents seized pursuant to section 10 of the Act in other inquiries.

In *Metropolitan Toronto Pharmacists' Association*,[2] *Henry Galler Inc.*,[3] *Jim Pattison Industries Ltd.*,[4] *Skis Rossignol Canada Ltée*,[5] *Lof Glass of Canada Ltd.*,[6] and *Blackwoods Beverages Ltd.*,[7] the courts either declared that documents seized pursuant to section 10 were admissible in evidence, or made orders, in the context of pre-trial applications by the accused, allowing the Director to retain documents or copies of documents seized pursuant to section 10 which would be required as evidence at trial. In the *Alexanian*[8] case, a motion at trial to exclude documents seized pursuant to section 10 was granted on the basis that the search had been unreasonable. In *Burns Foods*,[9] documentary evidence seized pursuant to section 10 was excluded at the preliminary inquiry into charges against the accused. All of these decisions are discussed in greater detail at pages 15 and 16 of the annual reports for both 1984 and 1985.

As the number of outstanding inquiries in which searches were conducted pursuant to section 10 has decreased, fewer decisions on the disposition of documents seized pursuant to section 10 have been issued this year.

In *R. v. 215626 Alberta Ltd.*,[10] Mr. Justice Yanosik of the Alberta Court of Queen's Bench excluded from evidence, during a trial on a charge of bid-rigging, documents seized pursuant to section 10 in June 1982. He noted that, at the time the Director authorized and his representatives conducted the search, the Director knew or should have known from his experience in the *Southam* case that the constitutional validity of section 10 was seriously in issue in Alberta. Mr. Justice Yanosik concluded that the Director could not be said to have been acting in good faith in issuing his authorization to his representatives and in having them proceed with the search and seizure, without at least providing to the accused the safeguards that had been given to Southam pending the determination of the constitutional validity of the legislation, namely that any documents seized be sealed and left with the Clerk of the Court. Mr. Justice Yanosik ruled that there had been a violation of section 8 of the Charter, and that this must result in the rejection of the documents seized, because to do otherwise would bring the administration of justice in the province into disrepute.

Conversely, at the preliminary inquiry in *R. v. Dave Spear Ltd.*,[11] documents seized pursuant to section 10 in 1981 were ruled admissible in the absence of any evidence establishing that the admission of the evidence would bring the administration of justice into disrepute.

In 1983, after the decisions of the Alberta Court of Appeal in *Southam* and the Trial Division of the Federal Court in *Thomson*[12] which refuted the constitutional validity of the search powers conferred by section 10 of the Act, the Director decided to resort to the provisions of the Criminal Code to obtain search warrants to investigate suspected offences under the Combines Investigation Act.

The right to use Criminal Code search warrants in combines investigations, given the invalidity of the search procedures in section 10 of the Combines Investigation Act, was confirmed in 1985 by the Ontario Court of Appeal in *Miles Laboratories Ltd. v. Attorney General of Canada*[13] and by the Québec Court of Appeal in *Ciment Indépendant Inc. c. Lafrenière*.[14]

During the year, a number of Charter-related and other issues were discussed in decisions arising from the use of Criminal Code search warrants in combines investigations.

In *Ciment Indépendant Inc. c. Lafrenière*, the Québec Court of Appeal allowed an appeal from a decision of Mr. Justice Chevalier of the Superior Court relating to search warrants issued to representatives of the Director pursuant to section 443 of the Code. The Court of Appeal held that Chevalier J. was correct in holding that warrants could be issued under section 443 of the Code when the infraction alleged was predatory pricing contrary to paragraph 34(1)(c) of the Combines Investigation Act and in holding that the description of objects to be seized in the warrant was sufficient, except for the words "and other documents," which were struck. However, the Court allowed the appeal on the grounds that a Justice of the Peace in the district of Hull did not have jurisdiction to issue warrants to be executed in Montréal when the offence alleged had no connection with Hull. Leave to appeal this decision to the Supreme Court of Canada was refused.

This decision was followed, on another application to quash search warrants, by Mr. Justice Frenette of the Québec Superior Court in *Raymond Lanctôt (1982) Ltée c. Samson*.[15]

In *R. v. Fleet Aerospace Corp.*,[16] Associate Chief Justice Parker quashed two search warrants issued pursuant to section 443 of the Code and ordered the return of documents seized. The information and warrants referred to possible offences under section 33 of the Act likely to take place in the future. Parker A.C.J. held that the information relied on did not give reasonable and probable grounds that an offence had been committed. He held that, before the provisions of the Criminal Code can be invoked, the Director must be pursuing the investigation of an offence that has been committed, and not merely inquiring as to the likelihood of an anticipated offence. He also noted that the warrant had been sought for purposes other than those set out in section 443, i.e., to secure an interim injunction.

In *R. v. William Aikenhead Door & Hardware Ltd.*,[17] the Ontario Court of Appeal dismissed an appeal from an order of Mr. Justice Smith quashing a search warrant issued pursuant to section 443 of the Criminal Code in a bid-rigging inquiry. However, the Court allowed the Crown 14 days to obtain a new warrant before the return of seized material to the respondent. The Court held that the original warrant and information were defective in certain respects. However, the Court did not agree with Mr. Justice Smith that the warrant was defective because the only evidence put before the justice who issued the warrant was attributed to a "trustworthy person" without any identification of the individual or his source of knowledge. The Court noted that the privilege against the disclosure of a source of information is well established. The decision of the Court also indicates that the issuance of a warrant providing for the seizure of similar fact evidence is permissible in the proper circumstances.

In *Director of Investigation and Research v. Famous Players Ltd.*,[18] Judge Fontana of the Ontario Provincial Court issued an order pursuant to section 446 of the Criminal Code and subsection 17(5) of the Combines Investigation Act, permitting the Crown to detain all documents seized under a Criminal Code search warrant and providing that the documents be delivered to the Director. Judge Fontana held that on an application for detention of docu-

ments by the Crown the proper test is potential relevancy. One matter in issue was whether or not a warrant can authorize the seizure of documents dated or prepared outside the dates of the alleged offences. Judge Fontana held that the proper test is not whether or not a document is dated within the framework of the dates alleged in the warrant, but whether or not it is potentially relevant to the offence alleged between those dates. He also permitted the Crown to detain documents which appeared to have no direct bearing on the markets referred to in the warrant because they might, when taken in total context, be probative of the offences alleged within those markets. An appeal from this decision by Famous Players was scheduled to be heard in May 1986.

In *R. v. Trans Canada Glass Ltd.*,[19] on an application pursuant to subsection 17(5) of the Combines Investigation Act and section 446 of the Criminal Code, Judge Fontana issued an order permitting the Director to detain documents seized pursuant to section 443 of the Code for a period of three months. He held that, on an application for detention of items seized under a search warrant for the initial three-month period, notice of the application need not be given. This decision is to the opposite effect of the decision in *R. v. Zaharia and Church of Scientology*,[20] in which Mr. Justice Osler of the Supreme Court of Ontario held that notice was required on the initial application for detention under the then prevailing section 446 of the Code. (Amendments to the Criminal Code came into force in December 1985.)

There have also been several Charter-based challenges to section 17 of the Act, which empowers a member of the Restrictive Trade Practices Commission to issue orders for the oral examination of witnesses and the production of documents.

In 1983 the Federal Court of Appeal rejected a challenge to section 17 orders for oral examination and the production of documents in the *Ziegler*[21] decision. The same year, Mr. Justice Scheibel of the Saskatchewan Court of Queen's Bench held in *R.L. Crain Inc.*[22] that section 17 of the Act was of no force or effect, because it violated the applicant's rights under section 7 of the Charter. Leave to appeal the *Ziegler* decision to the Supreme Court of Canada was denied; the *Crain* decision was under appeal to the Saskatchewan Court of Appeal at year-end. These decisions are discussed in greater detail at page 16 of the 1984 Annual Report.

This year, two significant decisions on the constitutional validity of section 17 have been issued.

In *Transpacific Tours Limited v. Director of Investigation and Research*,[23] Mr. Justice Lysyk of the Supreme Court of British Columbia dismissed applications for declarations that section 17 of the Act was of no force or effect or inapplicable to the applicants by reason of inconsistency with section 7 of the Charter.

The applicants argued that the compulsion to testify and produce documents imposed by section 17 of the Act violated rights guaranteed to them by section 7 of the Charter. The applicants could not rely on paragraph 11(c) of the Charter, which deals specifically with non-compellability, because by its terms it is concerned only with rights available to a person who has been charged with an offence. Nor could they invoke section 13, which deals specifically with self-incrimination, as it is available only to protect against testimony given being used to incriminate a witness in other proceedings. They argued, therefore, that section 7 of the Charter provides a residual protection against self-incrimination going beyond the rights guaranteed in paragraph 11(c) and section 13, which applies to persons under investigation for possible commission of an offence. The respondents argued that paragraph 11(c) and section 13 are exhaustive of the Charter's treatment of compellability and self-incrimination, and that the general language of section 7 ought not to be construed as embracing additional rights concerning those same subjects. The applicants also argued that section 7 of the Charter protects a right to commercial privacy and that section 17 of the Combines Investigation Act is inconsistent with that right.

The Court dismissed the application, noting that the form of limited protection against self-incrimination afforded by the Canada Evidence Act and the relevant provisions of the Combines Investigation Act and reflected in section 13 of the Charter is deeply ingrained in

the Canadian criminal justice system. The Court indicated that the applicants' submission relating to commercial privacy involved a "piecemeal approach," ascribing some aspects of the right of privacy to section 8 and others to section 7 of the Charter, and rejected it along with the applicants' submission relating to self-incrimination.

This decision has been appealed.

In *Thomson Newspapers Ltd. v. Director of Investigation and Research*,[24] Mr. Justice Holland of the Supreme Court of Ontario ruled on an application for declarations and an injunction on the ground of conflict between the Charter and the provisions of section 17 of the Combines Investigation Act. He held that the provisions of the Act authorizing the granting of orders for the production of documents are in conflict with section 8 of the Charter, but upheld the constitutional validity of orders for oral examination issued pursuant to section 17 of the Act.

Mr. Justice Holland held that an order for the production of documents issued pursuant to section 17 constitutes a seizure within the meaning of section 8 of the Charter. He noted that, in order to meet the requirements of the Constitution, the legislation itself must provide protection against unreasonable search or seizure. He found that the Combines Investigation Act is almost totally silent on safeguards for prior authorization. There is no requirement for prior authorization by an impartial assessor, no requirement of relevance, nor any limitation as to the scope of production. The impugned subsection makes no provision for a disclosure by the applicant seeking the order of the grounds upon which the order ought to be given. It simply follows from the assertion that an investigation is ongoing. The statute lacks any requirement that there be reasonable and probable grounds, established upon oath, for the belief that an offence has been committed and that there is evidence to be found at the place of search. Furthermore, the documents ordered to be produced are not covered by the protection given to oral evidence by subsection 20(2) of the Act. Holland J. concluded that subsections 17(1) and 17(4) operate to compel production of documents in a criminal proceeding, and are unconstitutional in that they are inconsistent with section 8 of the Charter.

With respect to orders for oral examination, the applicants argued that "fundamental justice" in section 7 of the Charter encompasses the right of the accused to remain silent and a right against self-incrimination in circumstances where a criminal prosecution could result. Mr. Justice Holland rejected this argument. He held that the rights set out in paragraph 11(c) and section 13 of the Charter are the only rights against self-incrimination that are so deeply rooted in our law and tradition as to be fundamental and that there is no residual right against self-incrimination contained in section 7 of the Charter. Holland J. noted that the inquiry provisions of subsections 17(1), (2) and (8) of the Act clearly serve a public interest of importance, and that there was no need to embark upon the balancing of public versus private interests as the public interests served by such an inquiry are clear and the private interest is properly protected. Therefore, he dismissed the part of the application relating to orders for oral examination. At year-end, both parties had applied for leave to appeal this decision. The Competition Act contains revised investigatory powers for use in combines investigations.

(2) *Other Charter Matters*

During the year, the courts also issued a number of judgments relating to other provisions of the Act which allegedly conflict with section 7 or paragraph 11(d) of the Charter.

In *R. v. Dave Spear Ltd.*[25] during a preliminary inquiry on a charge of conspiracy, Judge Harris of the Ontario Provincial Court held that subparagraph 45(2)(c)(ii) of the Act constitutes a mandatory reverse onus provision, contrary to paragraph 11(d) of the Charter. In his view this provision purports to make documents *prima facie* proof of facts so that the accused would, at a trial, have to adduce evidence displacing those facts on a balance of probability.

In contrast, arguments that section 45 imposes a reverse onus that violates the Charter were rejected in the *Metropolitan Toronto Pharmacists' Association*[26] case and in the *R.L. Crain Inc.*[27] case. The *Crain* decision was under appeal to the Saskatchewan Court of Appeal

at year-end. A more detailed discussion of these decisions is contained in the 1984 Annual Report at page 17.

Accused persons have also argued that certain of the misleading advertising and deceptive marketing practices provisions of the Act conflict with the Charter.

Paragraph 36(1)(b) of the Act puts the onus on a person making a performance claim to prove that it is based on an adequate and proper test. This provision was found not to be in conflict with the Charter in *R. v. Canadian Tire Corp.*,[28] *R. v. Professional Technology of Canada Ltd.*,[29] and in *R. v. Teixeira*.[30] These decisions accord with an earlier decision of the Ontario Provincial Court in *R. v. 356433 Ont. Ltd.*[31]

Paragraphs 37.3(2)(c) and (d) of the Act limit the common law defence of due diligence by requiring a person accused of an offence under section 36 or 36.1 to establish that he took reasonable measures to bring an error to the attention of the class of persons likely to have been reached by a representation or testimonial and that these measures were taken forthwith after the representation was made or the testimonial was published, except where the representation or testimonial related to a security.

In *R. v. Westfair Foods Ltd.*,[32] Mr. Justice Hrabinsky of the Saskatchewan Court of Queen's Bench held that, on a charge under paragraph 36(1)(a) of the Act, the effect of paragraphs 37.3(2)(c) and (d) was to deprive the accused of the common law defence of due diligence and make it face an offence that was, in effect, an absolute liability offence. He held that, having regard to the potentially severe penalty for a violation of paragraph 36(1)(a) of the Act, subsection 37.3(2) of the Act does not conform to the principles of fundamental justice and thus contravenes section 7 of the Charter. This decision was under appeal to the Saskatchewan Court of Appeal at year-end.

Mr. Justice Coleman of the Manitoba Court of Queen's Bench found, in *R. v. Westfair Foods Ltd.*,[33] that paragraphs 37.3(2)(c) and (d) contravene section 7 and paragraph 11(d) of the Charter and are therefore unconstitutional and of no force and effect. In consequence, he dismissed an appeal from the acquittal of the accused on a charge of false or misleading advertising contrary to paragraph 36(1)(a) of the Act.

During the year there were also decisions relating to the effect of the Charter on the use of preferred indictments and on the right to be tried within a reasonable time guaranteed by paragraph 11(b) of the Charter.

In *Attorney General of Canada v. Canada Packers Inc.*[34] Mr. Justice Lomas of the Alberta Court of Queen's Bench allowed an application by the Attorney General to strike out a statement of claim in an action for declarations and an injunction. Canada Packers had commenced an action in that Court claiming, *inter alia*, a declaration that parts of an indictment against it were invalid and a declaration that the provisions of the Criminal Code permitting the Attorney General to prefer an indictment after the accused has been discharged following a preliminary inquiry are inconsistent with the Charter and of no force or effect. Lomas J. held that Canada Packers could not resort to the Court in its civil jurisdiction for this type of declaration, and allowed the Attorney General's application to strike out the statement of claim.

In 1983 in the *Brown Shoe*[35] case, Mr. Justice Potts of the Supreme Court of Ontario concluded, on a preliminary motion, that a second application by the Attorney General for the written consent of a Supreme Court judge to the preferring of an indictment constituted an abuse of process and stayed the proceedings. Potts J. was not required to consider whether a second application constitutes cruel and unusual treatment contrary to section 12 of the Charter. This case is discussed in greater detail at page 33 of the 1984 Annual Report.

In *Attorney General of Canada v. Canadian Pacific Express & Transportation Ltd.*[36] the Alberta Court of Appeal considered the right of a person charged with an offence to be tried within a reasonable time, which is guaranteed by paragraph 11(b) of the Charter, along with a number of other issues. The Court allowed an appeal by the Crown from a judgment in which Madam Justice McFadyen of the Alberta Court of Queen's Bench held that a Provincial

Court judge had lost jurisdiction over Canadian Pacific Express & Transport Ltd. and Kenneth G. Paulley in 1980 on a charge of conspiracy by not formally adjourning the case to a date certain while higher courts dealt with a constitutional issue. Mr. Justice McClung held, in the Court of Appeal, that what occurred before the Provincial Court judge was at its highest a procedural irregularity, not affecting the jurisdiction of the Provincial Court. At the same time, the Court heard an appeal from another judgment in which Madam Justice McFadyen held that Canadian National and another company accused in the same matter were not entitled to relief for infringement of paragraph 11(b) or section 7 of the Charter, or for abuse of process. McFadyen J. nevertheless granted an order prohibiting the Provincial Court judge from continuing with proceedings against those companies on account of her finding, on the Canadian Pacific application, that the Provincial Court judge had lost jurisdiction. McFadyen J. had noted that there was no serious allegation of post-charge delay in the matter and had concluded that delay prior to the laying of the information could not form the basis of a successful application under paragraph 11(b). In the Court of Appeal, Mr. Justice McClung agreed. Madam Justice McFadyen had also declined to find that the Crown had intentionally delayed the formal institution of charges. The Court of Appeal held that this determination answered two submissions of the respondents: first, that the date of the information may not be conclusive in weighing the right to trial within a reasonable time if officers of the Crown have deliberately refrained from laying a charge in order to intentionally prejudice an accused from later making full answer and defence at his trial; and second, that the conduct of the prosecution or its agents was eroded by deceitful motives causing oppression or unfairness and thus constituted abuse of process. The Court of Appeal, while agreeing with Madam Justice McFadyen's conclusions on paragraph 11(b) of the Charter and abuse of process, allowed the Crown's appeal from her judgment because it disagreed with her determination on loss of jurisdiction by the Provincial Court judge. The Court remitted the case to the Provincial Court of Alberta to fix a date for the preliminary inquiry.

The accused applied for leave to appeal both aspects of the Court of Appeal decision to the Supreme Court of Canada. At year-end, the Supreme Court had refused leave to appeal in the Canadian Pacific matter and had reserved its decision on Canadian National's application. The preliminary inquiry was scheduled to commence in September 1986.

In previous years, decisions relating to paragraph 11(b) of the Charter, all favourable to the Crown, were issued in the *Bogardus, Wilson Ltd.*,[37] *Geo. W. Crothers (1965) Ltd.*[38] and *McLellan Supply Ltd.*[39] cases.

(3) *Constitutional Validity of Various Provisions of the Act*

In *Attorney General of Canada v. Québec Ready Mix Inc.*,[40] the Federal Court of Appeal, on an appeal from a preliminary ruling of the Trial Division in an action for damages, upheld the constitutional validity of the recovery of damages provision in section 31.1 of the Act, and the jurisdiction of the Federal Court to hear a claim for damages.

Mr. Justice MacGuigan held that paragraph 31.1(1)(a) is within the jurisdiction of the federal Parliament as having a rational functional connection with the overall federal economic plan manifested in the Combines Investigation Act in relation to competition, which satisfies all the criteria of validity under the federal trade and commerce power. He also found that subsection 31.1(1) constitutes existing and applicable federal law which can be invoked to support the jurisdiction of the Federal Court over proceedings under section 31.1.

Mr. Justice Pratte noted that when the Constitution gives Parliament the power to enact a prohibition, it impliedly also gives it, as a rule, the power to determine the consequences, whether civil or penal, of a violation of that prohibition. The prohibitions against conspiracy contained in subsection 32(1) of the Act were validly enacted in the exercise of Parliament's power to regulate trade and commerce. Therefore, Parliament had the power to enact subsection 31.1(1), which obliges persons who violated subsection 32(1) to compensate those prejudiced by the violation.

Mr. Justice Ryan held that the conspiracy provisions of the Act are constitutionally valid under the federal trade and commerce power, and that there is a rational and functional con-

nection beween subsection 32(1) and section 31.1. Therefore, section 31.1 is at the very least incidental to the regulation of trade and commerce and thus constitutionally valid. However, he concluded that it would be more appropriate to characterize section 31.1 as legislation directly related to the regulation of trade and commerce. He added that, if necessary, a broader base for the validity of section 31.1 could be found in the circumstance that it fits comfortably within an elaborate legislative scheme established by the Act, including penal sanctions, administrative processes, and civil remedies, the purpose of which is "general regulation of trade affecting the whole dominion."

In *City National Leasing Ltd. v. General Motors of Canada Ltd.*,[41] the Ontario Court of Appeal agreed with the conclusion reached by the Federal Court of Appeal in the *Québec Ready Mix* decision. The Court upheld the constitutional validity of section 31.1 on an appeal from a decision striking out certain paragraphs of the statement of claim in a civil action.

At year-end, the Supreme Court of Canada had granted leave to appeal from the decisions in both *Québec Ready Mix* and *City National Leasing*.

In another decision touching on the constitutional basis of the Act, the Federal Court of Appeal held, in *R. v. Shaklee Canada Inc.*,[42] that the provisions of the Act relating to pyramid selling contained in section 36.3 are clearly supportable under the criminal law power conferred on the federal Parliament under head 27 of section 91 of the Constitution Act. Mr. Justice Heald found that it was unnecessary to consider alternative arguments relating to Parliament's authority to enact section 36.3 under the federal trade and commerce power or under Parliament's authority to make laws for the peace, order and good government of Canada.

(4) *Other Matters*

In *R. v. British Columbia Fruit Growers Association*,[43] Mr. Justice Davies, of the Supreme Court of British Columbia, while acquitting the accused on a charge of conspiracy contrary to paragraph 32(1)(a) of the Act, concluded that the intent of paragraph 32(1)(a) is to maintain competitive access to facilities. He rejected a defence argument that the words "limit" and "facilities" should be so interpreted that only an agreement to reduce the size or number of facilities would be prohibited by paragraph 32(1)(a). Nevertheless, he acquitted the accused because he had some doubt as to whether it could be said that the agreement in question "unduly" limited facilities for storing or dealing in tree fruit.

In *R. v. Shaklee Canada Inc.*,[44] the Federal Court of Appeal allowed an appeal from a judgment of the Trial Division refusing to grant a prohibition order pursuant to subsection 30(2) of the Act in relation to pyramid selling. Mr. Justice Heald, with Pratte and Urie JJ. A. concurring, found that the respondent had committed a breach of the provisions of subsection 36.3(2) of the Act, and that the Court should exercise its discretion in favour of issuing an order. The Court rejected a defence based on subsection 36.3(4) of the Act because it had not been shown that any province or territory had licensed or otherwise permitted the practices defined in subsection 36.3(1) of the Act as schemes of pyramid selling.

The regulated conduct defence, established in a long line of judgments (including *Canadian Breweries*[45] and *Jabour*[46]), is well recognized. However, two recent decisions demonstrate that the defence is limited in scope.

In *R. v. British Columbia Fruit Growers Association*, Mr. Justice Davies of the Supreme Court of British Columbia, while acquitting the accused of a conspiracy charge under paragraph 32(1)(a) of the Act, rejected the accuseds' argument that there was authorization for their actions and therefore their actions could not be illegal. He indicated that the B.C. Fruit Board, constituted under a regulation made pursuant to the Natural Products Marketing Act, had the power under the Act to license packing houses and did so by regulation. However, while the wording of the Act might well have permitted the Board to further control the operation of packing houses, it did not do so. There was no regulatory legislation in effect at the relevant time on which the packing houses could rely for their restrictions on the use of facilities. Consequently, he rejected the argument that what was done was done pursuant to validly enacted provincial legislation and therefore could not be criminal.

Similarly, in *R. v. Air Canada*,[47] Judge Porter of the Ontario Provincial Court, while acquitting the accused of three charges of non-availability, contrary to subsection 37(2) of the Act, rejected Air Canada's argument that the Court did not have jurisdiction to hear the charges on the basis that the airline industry is a highly regulated industry. He noted that the Combines Investigation Act provides a direct forum for complaints that are by and large outside the rules and regulations addressed by the National Transportation Act and the Aeronautics Act and, therefore, the Combines Investigation Act is not in conflict with these Acts.

The Bureau has taken the position that an accused can avail itself of the regulated conduct defence only if there was validly enacted legislation authorizing regulation, the regulatory scheme relied on was authorized by that legislation, the accused's conduct was authorized by the regulator as the result of an exercise of authority under the approved scheme, and the accused did not behave in such a way as to frustrate the exercise of regulatory authority.

4. Prohibition Order

The Gray Line of Vancouver — Sight-seeing Tours

This inquiry was commenced in March 1982 on receipt of a complaint from a small sight-seeing tour operator in Vancouver. The complainant alleged that Gray Line of Vancouver Inc., owned and operated by Pacific Northwest Bus Company Ltd., was trying to establish a monopoly in the sight-seeing tour market through the use of exclusive contracts with most hotels and sales locations in the Greater Vancouver area.

On July 16, 1985, with the consent of the Respondent, the Deputy Attorney General of Canada commenced proceedings in the Federal Court of Canada — Trial Division for an Order of Prohibition pursuant to subsection 30(2) of the Act. In doing so, the Deputy Attorney General sought to have prohibited those policies and practices of Pacific Northwest Bus Company Ltd. that could have been the subject of a prosecution.

The Order of Prohibition was granted on that date. The Order prohibits the Respondent from engaging in activities directed towards establishing a monopoly. To provide Gray Line's competitors with equal and fair access to potential customers, the Order specifically prohibits the respondent from entering into contracts with any hotel, sales location or tourist attraction that prohibits or restricts the sale or display of advertising and promotional material of competitors' products in the hotel, sales location or tourist attraction. A copy of the Order appears in Appendix IX.

5. Mergers

Public interest in mergers stems from the fact that mergers can change the structure of an industry in ways which may have important implications for the future performance of the economy. Hundreds of mergers — both publicly reported and unreported — occur in Canada each year. Some have a beneficial impact on the economy and many are neutral in their consequences. While only a few mergers may have adverse effects on future economic performance, it is important to have legislation in place which can prohibit or modify those mergers judged contrary to the public interest.

Merger Data

General analysis of merger activity requires an extensive data base. There is, however, no on-going comprehensive survey of mergers and acquisitions in Canada. A merger register, maintained by the Bureau of Competition Policy since 1960, is compiled from published reports in the financial press and industry and trade journals. Since the establishment of the Foreign Investment Review Agency (FIRA) in 1974 (now Investment Canada), acquisitions reported by that agency have also been included in the register.

ACQUISITION BY FOREIGN & DOMESTIC CONTROLLED FIRMS, 1983 & 1984
(Merger Register Data)

Acquired Firm Industry Category

1984	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	
Acquiring Firm Industry Category 1	3																														3
2		3																													3
3			4																												4
4				28	1													3		2	1		2				1	1	3		42
5					27														1				1				5		3		37
6					1	2																									3
7							1																				1				2
8																															
9									11	1											1						1				14
10																											1				1
11											6												1				1				8
12												8																			8
13									1			1	3					1						2			3				11
14					2							1		21										2			3		1		30
15															28			2		1							3		3		37
16																															
17					1								1				41	2		1	1		1				7		1		56
18																1	1	32	1	2			2				10		1		50
19																1		1	20		1		1	2			8		1		35
20									1								2	3		43			1	2			25		7		83
21																		1			15		3		1		2		1		23
22																						1					7		1		9
23				1	1												3				2		46				12		8		73
24							1	1									3				2		1	14			16	1	3		42
25																	1	1							12				1		15
26					2									1										1		53	4	1			62
27					1					1	1						1	2	2	1	1	1	1	2			74		4		92
28			1	7	7		2		1		3	4	1	7	2	2	20	8	8	12	9		18	13	2	9	57	59	84	1	337
29															1		1	2		1	1						6		155		167
30																	1			1	1		1	1			2		1	14	22
	3	3	5	36	43	2	4	1	14	2	10	14	5	29	31	4	75	57	32	64	35	2	78	39	15	62	249	62	278	15	1269

diagonal total 710
(excludes unclassified)

Source: Merger Register, Bureau of Competition Policy, 1983 and 1984.
The following schedule identifies the industrial classification codes used in the matrix above.

Schedule

1 Agriculture
2 Forestry
3 Fishing and trapping
4 Mines, quarrying, oil wells
5 Food and beverage
6 Tobacco products
7 Rubber
8 Leather
9 Textiles
10 Knitting mills
11 Clothing
12 Wood
13 Furniture and fixtures
14 Paper
15 Printing, publishing
16 Primary metal
17 Metal fabricating
18 Machinery
19 Transportation equipment
20 Electrical products
21 Non-metallic mineral products
22 Petroleum and coal products
23 Chemicals and chemical products
24 Miscellaneous manufacturing
25 Construction
26 Transportation, communications, utilities
27 Trade
28 Finance, insurance, real estate
29 Community, business or personal services
30 Unknown

However, the merger register is limited. Firms in the services sector were largely excluded from the register prior to 1976 since the Combines Investigation Act did not extend to these industries until that year. In addition, since the merger register is based upon published sources, it is an incomplete count of the overall number of mergers and acquisitions that occur in Canada each year. This has been particularly true for domestic acquisitions for which there have been no notification requirements. Further, information pertaining to characteristics of the firms involved in mergers (i.e. assets, sales, employment, profits) and the characteristics of the transactions (i.e. value, method of financing) are not systematically available from published sources. Consequently, analysis regarding the impact of mergers is impeded.

The Bureau classifies the acquiring and acquired firms listed in the merger register into 29 industrial categories. Within manufacturing, the categories generally correspond to two-digit Standard Industrial Classification (major group) codes. The classifications outside manufacturing represent one or more industrial divisions, i.e. several major groups. The matrix shown above has been constructed from this classification.

In 1983-84, 1 269 mergers (both foreign and domestic) were enumerated in the merger register. Most noticeable is the relatively large number of mergers (57 percent) within the

same industrial category. Also striking is the fact that 70 percent of firms in the Trade category (27) were acquired by firms outside that category; over 80 percent of the entities classified to Finance, insurance, real estate (28) made acquisitions outside that category.

It is tempting to conclude from the large number of mergers within the same industrial categories that they are likely to be horizontal in nature and that concentration is increasing. However, this interpretation is inappropriate. First, foreign acquisitions, while representing acquisitions of control, need not have any impact on the number of firms engaged in industrial activity in any particular category. Second, concentration is, among other factors, a function of the incidence (as opposed to the number) of mergers in particular industries, the relative size of the merging firms, and entry into and exit from the industries in question. This might explain the fact that while the Chemicals and chemical products category (23) shows the largest number of intra-group mergers in the manufacturing sector for 1983-84, the percentage of sales and assets accounted for by the largest four and largest eight firms in Chemicals and chemical products nonetheless declined slightly from 1982 to 1983, the latest year for which such data is available. (Statistics Canada, Corporations and Labour Unions Returns Act, Report for 1983).

Further, the 29 industry categories are too broad to coincide with any particular concept of a market or industry. The use of four-digit classifications will naturally yield fewer mergers classified as horizontal than the use of two-digit categories. For example, four-digit classification of a subset of mergers in the merger register for 1980-83 indicates that 27 percent of these mergers were horizontal, i.e. occurred between firms within the same four-digit classification. Over the same period, 54 percent of the mergers in this subset were between firms within the same two-digit classification.

Importantly, even if structural concentration could be established, the openness of the Canadian economy to imports attenuates any simple relationship between concentration in domestic production and competition in domestic markets. Finally, other factors also affect competition in the market place, e.g., entry barriers and the availability of acceptable substitute products.

The fact that so many firms outside the Trade category (27) acquired firms in that category is largely explained by foreign acquisitions. These accounted for over three-quarters of the outside firms that acquired firms in the Trade category in 1983-84. This might be due to their acquisition of Canadian importers and/or distributors of their products. The large number of acquisitions by entities within the Finance, insurance, real estate category of firms outside that category reflects the fact that acquiring holding companies are classified to category (28). One would not expect their acquisition to be limited to any particular industry.

In order to more accurately assess the impact of mergers in Canada, a more systematic and complete collection of data is needed.

Motives for Merger

Mergers are undertaken for a variety of reasons. Some mergers or acquisitions occur in order to achieve lengthened production runs, consolidation of distribution, or the transfer of corporate control from inefficient to efficient management, and might thereby lead to more efficient resource use. Other merger activity is associated primarily with private gains to the firms involved. These include mergers undertaken to increase market power or to exploit tax loopholes. Still other mergers result from specific managerial behaviour, e.g. mergers undertaken by empire-building managers or as defensive tactics to avoid being acquired. In these cases managers may have interests which diverge from those of shareholders.

The Bureau has sponsored several studies aimed at examining the rationales for and results of merger activity. Their results are by no means conclusive, but the studies are indicative of the type of work being done in this area.

An interview survey conducted by Gordon Walter in 1983 (*Conglomerate Merger Motives in Canada*, mimeo) found that "pure" conglomerate mergers differed from other types of mergers in Canada over the period 1978-81 in that financial considerations were

judged to be "uniquely dominant." These considerations included utilizing the financial strengths of the acquired and/or acquiring company (e.g. foreign tax credits, tax losses or borrowing capacity); gaining valuable or potentially valuable assets with the cash flow or other financial strengths of the acquiring firm; and gaining complementary financial features, i.e., balancing earnings cyclicality. Walter suggests that these mergers primarily mobilized pecuniary economies and might not have led to productivity improvements. This type of criticism is often made of conglomerate acquisitions, which, by their very nature, lack obvious operating efficiencies. However, recent work in this area stresses that transferring assets from less to more capable management can also result in productivity or efficiency gains in such acquisitions.

Over the past ten years numerous studies have assessed the effects of mergers by examining their impact on the stock prices of bidder and target firms. The underlying assumption of these studies is that gains from these mergers — scale economies or other benefits available from combining and/or reorganizing control and management of corporate resources — will be reflected in the stock prices of the merging firms around the time the merger is announced. Most of these "event studies" use U.S. data. Their general finding is that shareholders of acquired firms show large gains around the time of the merger; however, significant gains typically are not documented for shareholders of the acquiring firms.

B.E. Eckbo prepared a paper for the Bureau on the valuation effects of Canadian mergers and acquisitions entitled *Mergers and the Market for Corporate Control: The Canadian Evidence* (mimeo). The study was based on more than 2 400 mergers that occurred in the period 1964-1983 and were enumerated in the merger register. In all cases the bidder and target firms were listed on either the Toronto Stock Exchange or the New York Stock Exchange. Using shareholder returns 12 months prior to and 12 months after the public merger announcement, Eckbo concluded that where target and bidder firms were listed on the Toronto Stock Exchange, on average they each earned significant gains from takeover activity. However, where the bidder firm was listed on the New York Stock Exchange, the results reflected the U.S. data in that bidder firms did not experience abnormal returns around the time of the merger. Eckbo noted that further study is needed to determine the reasons for this difference.

Measured gains to stockholders can, depending upon the type of merger, reflect increased market power. Gains can reflect wealth transfers, such as tax savings or gains from acquiring, at a relatively low price, assets that the market has undervalued. The larger average gains to shareholders of target corporations as opposed to bidder corporations might reflect the premiums paid to acquire control. It has also been suggested that the gains to shareholders immediately around the announcement date might simply be a continuation of a prior trend. As market values may not immediately, nor on average, accurately reflect new information affecting future profitability, a longer period than is typically used in event studies might be warranted to better identify the effects of mergers. (Dennis C. Mueller explores some of these issues in *United States' Antitrust: At The Crossroads*, mimeo).

It should be borne in mind that aggregate results can only be applied to individual cases with caution. For example, Eckbo reported *average* gains to TSE-listed target and bidder firms, but noted that approximately 50 percent of firms showed gains, while the other 50 percent showed losses.

The Competition Act

Recognizing that mergers must be assessed on a case-by-case basis in order to determine whether a particular merger will adversely affect economic performance, the Competition Act provides for the civil review of mergers by a specialized Competition Tribunal. The merger provisions give the Tribunal jurisdiction to make orders relating to mergers or proposed mergers if they are found to be likely to prevent or lessen competition substantially. This form of adjudication will permit the examination of complex economic evidence and not rely solely on the basis of evidence of market share or concentration. The Tribunal will consider gains in efficiency brought about by a merger that lessens competition. By establishing a forum for the sophisticated analysis of business and competition considerations, the Act specifically provides for the application of economic analysis to particular merger cases.

NOTES

1. *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, 55 A.R. 291, 11 D.L.R. (4th) 641, [1984] 6 W.W.R. 577, 33 Alta L.R. (2d) 193, 14 C.C.C. (3d) 97, 2 C.P.R. (3d) 1, 27 B.L.R. 297; 42 A.R. 93, 147 D.L.R. (3d) 420, [1983] 3 W.W.R. 385, 24 Alta L.R. (2d) 307, 3 C.C.C. (3d) 497, 72 C.P.R. (2d) 145 (C.A.); (1982), 42 A.R. 108, 65 C.P.R. (2d) 116 (C.A.); (1982), 136 D.L.R. (3d) 133, [1982] 4 W.W.R. 673, 20 Alta L.R. (2d) 114, 68 C.C.C. (2d) 356, 65 C.P.R. (2d) 80 (Q.B.).

2. *R. v. Metropolitan Toronto Pharmacists Ass'n.* (1984), 3 C.P.R. (3d) 233 (Ont. H.C.J.).

3. *R. v. Henry Galler Inc.*, [1985] C.S.P. 1058.

4. *Jim Pattison Industries Ltd. v. The Queen*, [1984] 2 F.C. 954, (1985), 13 C.R.R. 339, 3 C.P.R. (3d) 9 (T.D.).

5. *Skis Rossignol Canada Ltée v. Hunter*, [1985] 1 F.C. 162, 15 C.R.R. 184 (T.D.).

6. *R. v. Loj Glass of Canada Ltd.*, B.C.S.C., December 5, 1984 (unreported).

7. *Blackwoods Beverages Ltd. v. The Queen* (1984), 30 Man. R. (2d) 249, 15 D.L.R. (4th) 231, [1985] 2 W.W.R. 159, 3 C.P.R. (3d) 336, 19 C.R.R. 48, 47 C.P.C. 249 (C.A.); (1983), 24 Man.R. (2d) 56 (Q.B.).

8. *R. v. Alexanian & Sons Ltd.* (1985), 15 C.R.R. 180 (Ont. Prov. Ct.).

9. *R. v. Burns Foods Ltd.* (1983), 76 C.P.R. (2d) 223 (Alta. Prov. Ct.).

10. *R. v. 215626 Alberta Ltd.*, Alta Q.B., December 12, 1985 (unreported).

11. *R. v. Dave Spear Ltd.*, Ont. Prov. Ct., August 23, 1985 (unreported).

12. *Thomson Newspapers Ltd. v. Hunter* (1983), 73 C.P.R. (2d) 67 (F.C.T.D.).

13. *Miles Laboratories Ltd. v. Atty-Gen. Can.*, Ont. C.A., October 9, 1984 (unreported).

14. *Ciment Indépendant Inc. v. Lafrenière* (1985), 21 C.C.C. (3d) 429, 47 C.R. (3d) 83 (Que. C.A.).

15. *Raymond Lanctôt (1982) Ltée. c. Samson*, Qué. C.S., 7 novembre 1985 (unreported).

16. *R. v. Fleet Aerospace Corp.* (1985), 19 C.C.C. (3d) 385 (Ont. H.C.J.).

17. *R. v. William Aikenhead Door & Hardware Ltd.*, Ont. C.A., December 23, 1985 (unreported).

18. *Director of Investigation and Research v. Famous Players Ltd.* (1985), 8 C.P.R. (3d) 116 (Ont. Prov. Ct.).

19. *R. v. Trans Canada Glass Ltd.*, Ont. Prov. Ct., January 8, 1986 (unreported).

20. *R. v. Zaharia* (1985), 21 C.C.C. (3d) 118, 14 C.R.R. 303, and note at 23 C.C.C. (3d) 192 (Ont. H.C.J.).

21. *Ziegler v. Hunter*, [1984] 2 F.C. 608, (1983), 51 N.R. 1, 8 D.L.R. (4th) 648, 81 C.P.R. (2d) 1 (C.A.); [1984] 1 F.C. 138, (1983), 75 C.P.R. (2d) 222, 39 C.P.C. 203 (T.D.).

22. *R.L. Crain Inc. v. Couture* (1983), 30 Sask. R. 191, 6 D.L.R. (4th) 478, 10 C.C.C. (3d) 119 (Q.B.).

23. *Transpacific Tours Ltd. v. Director of Investigation and Research* (1985), 68 B.C.L.R. 32, [1986] 2 W.W.R. 34, 8 C.P.R. (3d) 325 (S.C.).

24. *Thomson Newspapers Ltd. v. Director of Investigation and Research* (1986), 54 O.R. (2d) 143, 9 C.P.R. (3d) 72, 25 C.C.C. (3d) 233 (H.C.J.).

25. Supra, note 11.

26. Supra, note 2.

27. Supra, note 22.

28. *R. v. Canadian Tire Corp.*, Ont. Prov. Ct., April 16, 1985 (unreported).

29. *R. v. Professional Technology of Canada Ltd.*, Alta. Prov. Ct., January 20, 1986 (unreported).

30. *R. v. Teixeira*, Que. C.S.P., March 26, 1986 (unreported).

31. *R. v. 356433 Ontario Ltd.*, Ont. Prov. Ct., February 3, 1984 (unreported).

32. *R. v. Westfair Foods Ltd.* (1985), 38 Sask. R. 12, 16 D.L.R. (4th) 668, [1985] 3 W.W.R. 423 (Q.B.).

33. *R. v. Westfair Foods Ltd.*, Man. Q.B., April 16, 1986 (unreported).

34. *Atty-Gen. Can. v. Canada Packers Inc.* (1985), 8 C.P.R. (3d) 199 (Alta. Q.B.).

35. *R. v. Brown Shoe Co. of Canada* (1983), 42 O.R. (2d) 674, 150 D.L.R. (3d) 290, 6 C.C.C. (3d) 425 (H.C.J.).

36. *Atty-Gen. Can. v. C.P. Express & Transportation Ltd.* (1985), 60 A.R. 380, 39 Alta. L.R. (2d) 299 (C.A.); (1984), 55 A.R. 229 (Q.B.); (1984), 55 A.R. 199, 33 Alta. L.R. (2d) 59 (Q.B.).

37. *R. v. Bogardus, Wilson Ltd.*, B.C. Prov. Ct., December 9, 1982 (unreported).

38. *R. v. Geo. W. Crothers (1965) Ltd.*, Ont. H.C.J., March 29, 1984 (unreported).

39. *R. v. McLellan Supply Ltd.* (1985), 64 A.R. 6 (Prov. Ct.).

40. *Atty-Gen. Can. v. Québec Ready Mix Inc.*, [1985] 2 F.C. 40, 8 C.P.R. (3d) 145, 24 C.C.C. (3d) 158 (C.A.); [1980] 1 F.C. 184, (1979), 105 D.L.R. (3d) 15, 51 C.C.C. (2d) 516 (T.D.).

41. *City National Leasing Ltd. v. General Motors of Canada Ltd.* (1986), 9 C.P.R. (3d) 134 (Ont. C.A.); (1984), 47 O.R. (2d) 653, 12 D.L.R. (4th) 273, 3 C.P.R. (3d) 262, 45 C.P.C. 174 (H.C.J.).

42. *R. v. Shaklee Canada Inc.*, [1985] 1 F.C. 593, (1985), 59 N.R. 147, 38 Alta. L.R. (2d) 289, 4 C.P.R. (3d) 433 (C.A.); [1981] 2 F.C. 730, 55 C.P.R. (2d) 243 (T.D.).

43. *R. v. British Columbia Fruit Growers' Ass'n.*, B.C.S.C., June 28, 1985 (unreported).

44. Supra, note 42.

45. *R. v. Canadian Breweries Ltd.*, [1960] O.R. 601, 126 C.C.C. 133, 33 C.R. 1 (H.C.J.).

46. *Law Society of British Columbia v. Atty-Gen. Can.*, [1982] 2 S.C.R. 307, [1982] 5 W.W.R. 289, 69 C.P.R. (2d) 1; (1981), 115 D.L.R. (3d) 549, [1981] 2 W.W.R. 159, 53 C.P.R. (2d) 87 (B.C.C.A.); (1979), 98 D.L.R. (3d) 442, [1979] 4 W.W.R. 385, 45 C.P.R. (2d) 163 (B.C.S.C.).

47. *R. v. Air Canada*, Ont. Prov. Ct., March 25, 1986 (unreported).

CHAPTER III

MANUFACTURING BRANCH

1. Activities

The Manufacturing Branch is responsible for the conduct of all inquiries under the Act with respect to the manufacturing sector of Canadian industry, excluding the manufacturing sectors of the pulp and paper and petroleum industries, which are the responsibility of the Resources Branch. The Manufacturing Branch is also concerned with matters relating to the construction industry.

The main function of the Branch is to undertake industrial and economic analysis based on information obtained from a broad variety of sources with respect to alleged restrictions of competition in the manufacturing sector, and to conduct inquiries into those situations where inquiry is warranted. Such analysis is for the purpose of determining whether there is reason to believe that violations of any provisions of Part V of the Act (with the exception of those sections relating to misleading advertising and deceptive marketing practices) have occurred or that grounds exist for the making of an order by the Commission under Part IV.1 of the Act.

The Branch is also concerned with inquiries relating to possible abuses of the rights and privileges conferred by patents and trade marks, where such abuses are related to the activities of firms in the industries for which it is responsible. It also maintains a general surveillance of competitive activities and competition policy issues in those industries so as to identify problem areas requiring analysis or investigation. From time to time it participates in interdepartmental committees and provides input with respect to competition policy in relation to proposed mergers under review by Investment Canada.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act

SECTION 32

(1) *Soft Drinks — Manitoba*

This inquiry commenced in July 1980 as a result of information obtained by the Director. During the inquiry the records of two bottlers in three cities in Manitoba and two bottler franchising companies located in Toronto, Ontario and British Columbia were examined pursuant to section 10 of the Act.

On January 20, 1983, the evidence obtained in the inquiry was referred to the Attorney General of Canada. On July 20, 1983, an Information was laid at Winnipeg charging Blackwoods Beverages Ltd. and Beverage Services Ltd. with one count under paragraph 32(1)(c) of conspiring to lessen, unduly, competition in the supply of soft drinks in Brandon, Manitoba, between March 1, 1977, and September 30, 1978. The Information also contained two counts under paragraph 38(1)(a) alleging that Blackwoods Beverages Ltd. had on two occasions attempted to influence upward the price at which Beverage Services Ltd. sold soft drinks in Winnipeg and Brandon, Manitoba.

On August 10, 1983, a further Information was laid against Blackwoods Beverages Ltd. and Coca-Cola Ltd. under paragraph 32(1)(c), alleging that both accused conspired to lessen, unduly, competition in the supply of soft drinks in Winnipeg, Manitoba, between February 1, 1980, and September 20, 1980.

Prior to the commencement of the preliminary inquiries in this matter a motion was brought forward by the three accused, pursuant to the Constitution Act, 1982, regarding the validity and admissibility of the evidence seized pursuant to section 10 of the Combines Investigation Act. The details regarding these proceedings appear at page 24 of the 1985 Annual Report.

In summary, on appeal from the Manitoba Court of Appeal, it was decided that while the seizures under section 10 of the Act predated the Charter and by virtue of the Charter were now illegal, the admissibility of the documents should be determined at the trial when all the evidence and full argument on the subject have been heard. The Supreme Court of Canada denied leave to appeal, and consequently the matter was sent back for preliminary inquiry.

The preliminary inquiry with respect to the July 20, 1983, Information commenced on April 1, 1986, and was subsequently adjourned pending the court's ruling with respect to the admissibility of the seized documents.

SECTION 32.2

(2) *Glass and Glazing — Vancouver*

This inquiry commenced in October 1979 following receipt of information by the Director alleging that a number of Vancouver-area glass and glazing contractors were involved in bid-rigging. During the inquiry the records of seven firms were examined pursuant to section 10 of the Act, and in March and July 1980 oral examinations were held in Vancouver pursuant to section 17.

On May 15, 1981, the evidence obtained in the inquiry was referred to the Attorney General of Canada. An Information containing four counts under section 32.2 was laid at Vancouver on May 19, 1982. The following firms were charged on one or more counts:

Coastal Glass & Aluminum Ltd.
Central Glass Products Ltd.
Bogardus, Wilson, Limited
Zimmcor Company — La Compagnie Zimmcor
PPG Industries Canada Ltd. — Industries PPG Canada Ltée

The preliminary inquiry commenced on May 9, 1984, and was completed on May 24, 1984. Subsequently, the court ordered Coastal Glass & Aluminum Ltd., Central Glass Products Ltd. and Bogardus, Wilson, Limited (amended as LOF Glass of Canada Ltd.) to stand trial. PPG Industries and Zimmcor were discharged.

The trial commenced on December 3, 1984, and was concluded on December 14, 1984. On December 19, 1984, the court found Coastal Glass & Aluminum Ltd. guilty on count one (relating to the Vancouver Law Courts). The other accused were found not guilty on counts two, three and four. Subsequently, on January 24, 1985, Coastal Glass & Aluminum Ltd. was fined $85 000 with respect to count one.

On January 17, 1985, a notice of appeal was filed with the British Columbia Court of Appeal with respect to counts two, three and four. The hearing of the appeal was scheduled for April 22, 1986.

(3) *Fencing Materials — Alberta*

This inquiry was formally commenced in May 1982 following receipt of information with respect to bid-rigging in the cities of Medicine Hat and Calgary. During the inquiry, searches were carried out in June 1982 pursuant to section 10 of the Act and oral examinations were held in November 1983 pursuant to section 17 of the Act.

On June 18, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under subsection 32.2(2) was laid at Medicine Hat on November 28, 1984, against McLellan Supply Limited and S.F. Scott Manufacturing Co. Limited with respect to a call for tenders by the city of Medicine Hat.

On May 17, 1985, following the preliminary inquiry, 215626 Alberta Ltd. (formerly known as McLellan Supply Limited) and S.F. Scott Manufacturing Co. Limited were ordered to stand trial.

The trial commenced in Medicine Hat on October 21, 1985, in the Alberta Court of Queen's Bench. It was adjourned on October 22, 1985, for judgment on a motion under section 8 and subsection 24(2) of the Charter to exclude documents seized under section 10 of the Combines Investigation Act. On December 12, 1985, the Court concluded that the seized documents should be excluded. The trial continued on January 13 and 14, 1986, without the documents and on the latter date the accused were acquitted.

(4) *Steel — Montréal*

This inquiry commenced in July 1983 following receipt of a complaint alleging bid-rigging with respect to the sale and supply of reinforced steel. During the inquiry the corporate records of six companies were examined.

On January 9, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under subsection 32.2(2) was laid at Montréal on January 11, 1985, against Acier d'Armature de Montréal (1979) Ltée, Acier Gendron Ltée, Fertek Inc., Armature L & V Ltée and Ferneuf G & S Inc.

At the preliminary inquiry held on March 6, 1985, three of the accused companies pleaded guilty. Fertek Inc. and Ferneuf G & S Inc. were fined $15 000 each and Acier d'Armature de Montréal (1979) Ltée received a $2 000 fine. An Order of Prohibition was issued against all three companies.

The preliminary inquiry for Acier Gendron Ltée was held on March 27, 1985, and resulted in a guilty plea. On April 12, 1985, the company was fined $10 000 and an Order of Prohibition was imposed. On June 17, 1985, Armature L & V Ltée was found guilty and an Order of Prohibition was imposed.

SECTION 38

(5) *Euroclean Canada Inc. — Husqvarna Sewing Machines*

This inquiry commenced in November 1979 following receipt of a complaint alleging a policy of resale price maintenance by Dometic Canada Inc. (now Euroclean Canada Inc.). During the inquiry the records of the company were examined pursuant to section 10 of the Act.

On October 27, 1981, the evidence in this inquiry was referred to the Attorney General of Canada. On April 20, 1982, an Information containing two counts under paragraph 38(1)(a) and two counts under paragraph 38(1)(b) was laid at Kitchener, Ontario, against Euroclean Canada Inc. The preliminary inquiry took place on October 12, 1982, and the accused company was ordered to stand trial on three counts.

The trial was set for October 1983 but was postponed pending the determination of relevant issues by the Supreme Court of Canada in *Canadian Dredge & Dock Co. Ltd. v. The Queen.*

The question before the Supreme Court in that case, and at issue in this matter, involved the circumstances in which a corporation is liable for the criminal acts of its employees and directors. The Supreme Court found the appellant corporations liable in this case. The Court concluded that the identity of the directing mind and the identity of the company coincided, based on the fact that the action taken by the directing mind (a) was within the field of operation assigned to him; (b) was not totally in fraud of the corporation; and (c) was by design or result partly for the benefit of the company.

Following the resolution of this issue, the trial of Euroclean Canada Inc. commenced on January 6, 1986. The accused was subsequently acquitted on all counts for reasons unrelated to the Supreme Court decision.

(6) *Bigelow Canada Limited — Carpets*

This inquiry commenced in March 1981 following receipt of a complaint from a retailer alleging that a representative of Bigelow Canada Limited had discriminated against him because of his low pricing policy. In April 1981, the records of the company were examined pursuant to section 10 of the Act, and in October 1981 oral examinations were held in Québec City.

The evidence obtained in the inquiry was referred to the Attorney General of Canada on March 30, 1982. An Information containing one count under paragraph 38(1)(b) was laid at Québec on August 12, 1982, against Bigelow Canada Limited.

The preliminary inquiry in this matter commenced on March 31, 1983, and the accused was ordered to stand trial. On June 8, 1984, the accused was acquitted. The Crown appealed the decision on July 5, 1984.

Bigelow Canada Limited changed its name to Les Tapis Artisans (1981) Inc., which subsequently went bankrupt in November 1984. The appeal was still pending at the end of the fiscal year.

(7) *The Camrost Group Limited — Condominiums*

This inquiry commenced in March 1982 following receipt of a complaint alleging that The Camrost Group Limited was engaged in resale price maintenance with respect to condominiums being offered for resale in One Parklane, a Toronto condominium development. The corporate records of the developer were examined in March 1982 pursuant to section 10 of the Act.

On November 25, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. An Information containing seven counts under paragraph 38(1)(a) was laid at Toronto on January 19, 1983, against The Camrost Group Limited. The preliminary inquiry was held on February 6, 1984, at which time the Crown withdrew one count. The accused was ordered to stand trial on three of the six remaining counts. On May 10, 1985, the company was convicted on one count and acquitted on the other two counts. On June 4, 1985, a fine of $10 000 was imposed.

(8) *Salomon Sports Canada Ltd./Ltée — Ski Equipment*

This inquiry commenced on August 5, 1981, following receipt of complaints alleging that Salomon Sports Canada Ltd./Ltée had refused to supply certain retailers because of the retailers' low pricing policies and that Salomon had also attempted to influence upward the price at which certain retailers sold Salomon's products. During the inquiry the corporate records were examined pursuant to section 10 of the Act. In April 1982 oral examinations under section 17 were conducted in Vancouver, during which five witnesses testified under oath.

On August 9, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. On February 16, 1983, an Information was laid at Montréal against Salomon Sports Canada Ltd./Ltée, containing five counts under paragraph 38(1)(a) and four counts under paragraph 38(1)(b).

Following the preliminary inquiry in May 1983 the accused was ordered to stand trial on eight counts. The trial commenced on October 24, 1983, and was concluded on November 25, 1983. On March 19, 1984, the accused was convicted on four counts under paragraph 38(1)(a) and three counts under paragraph 38(1)(b) and was acquitted on one count under paragraph 38(1)(b). On May 17, 1984, the accused was fined a total of $100 000. In addition, an Order of Prohibition was imposed. The company appealed the conviction on one count under paragraph 38(1)(a) and two counts under paragraph 38(1)(b). The appeal was heard on December 12, 1985, but at the end of the fiscal year no judgment had been rendered.

(9) *Sony of Canada Ltd. — Stereophonic Equipment*

This inquiry commenced in April 1982 following receipt of a complaint from a Toronto retailer alleging that Sony of Canada Ltd. had refused to supply him with stereophonic products due to his low pricing policy. During the inquiry the company's records were examined pursuant to section 10 of the Act.

On March 25, 1983, the evidence in this inquiry was referred to the Attorney General of Canada. On July 19, 1983, an Information containing six counts under paragraphs 38(1)(a) and 38(1)(b) was laid at Ottawa against Sony of Canada Ltd. On September 24, 1984, the accused was ordered to stand trial on two counts under each of paragraphs 38(1)(a) and (b).

In November 1984 counsel for Sony filed a motion to quash the order to stand trial on one count under each of paragraphs 38(1)(a) and 38(1)(b). The motion was heard in Toronto on February 5, 1985, and the motion was granted. The Attorney General appealed the decision and on October 21, 1985, the presiding judge allowed the appeal and set aside the order made on February 5, 1985. A trial date has been set for September 8, 1986.

(10) *Rainbow Jeans*

This inquiry commenced in February 1981 following receipt of a complaint from a retailer of casual clothing alleging that the Rainbow Jean Company Limited of Montréal, Québec, had attempted to influence upward the price at which he sold Rainbow-brand jeans.

Searches were conducted in February 1981 in Montréal and Charlottetown, Prince Edward Island, pursuant to section 10 of the Act. The matter was referred to the Attorney General of Canada in March 1982. An Information containing one count under paragraph 38(1)(a) was laid at Charlottetown on August 16, 1983, against Rainbow Jean Company Limited.

On September 19, 1983, defence counsel moved that the Information be quashed on grounds of duplicity, arguing that it was not specified which method (i.e., threat, promise or like means) had been used by the accused in committing the alleged offence. On October 17, 1983, the motion was dismissed. The accused then pleaded not guilty and elected trial by judge and jury. After argument on this point, defence counsel agreed that this option was not available to the accused and withdrew the election.

At the preliminary inquiry on January 18, 1984, defence counsel made a motion to quash the Information under section 24 of the Charter of Rights and Freedoms, alleging a violation of the accused's right under paragraph 11(a) thereof to be informed without unreasonable delay of the specific offence with which the accused was charged. Defence counsel contended that the time span before the laying of charges should be considered relevant in determining whether or not there had been an unreasonable delay. However, on February 15, 1984, the Court determined that the relevant period began only with the laying of charges and ruled that no unreasonable delay had in fact occurred in this instance.

The preliminary inquiry was completed on June 20, 1984, and the accused was ordered to stand trial. The trial was held on February 27 and 28, 1985, and on September 6, 1985, the accused was convicted. On October 8, 1985, the accused was fined $2 500.

(11) *Ziggy Jeans*

This inquiry commenced in February 1981 following receipt of a complaint from a retailer of casual clothing alleging that Lewis-Choi Enterprises Ltd., the sales agent for Western Glove Works Limited of Winnipeg, Manitoba, had refused to supply Ziggy-brand jeans to the retailer because of his low pricing policy.

Searches were conducted in February 1981 in Winnipeg, Charlottetown and Montréal pursuant to section 10 of the Act. The matter was referred to the Attorney General of Canada in March 1982. An Information containing one count under paragraph 38(1)(b) was laid at Charlottetown against Western Glove Works Limited and Lewis-Choi Enterprises Ltd. jointly on August 16, 1983.

Information included a period preceding incorporation of the company and it would, therefore, be necessary to charge one of the principal owners of Lewis-Choi Enterprises. This has not yet been done, due to discussions between defence and prosecution counsel on the disposition of the matter. The discussions were still in progress at the end of the fiscal year.

(12) *Drospo Inc. — Leather Clothing*

This inquiry commenced in March 1983 following receipt of a complaint from a retailer of leather garments for motorcyclists. The complainant alleged that Drospo Inc. had attempted to influence upward the price at which the retailer sold the product and had subsequently refused to supply the complainant because of his low pricing policy.

On January 5, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at St-Joseph de Beauce on April 24, 1984, against Drospo Inc. The preliminary inquiry was held on March 27, 1985, and the company was ordered to stand trial on both counts. On June 5, 1985, the defence introduced a motion to quash the indictment, which motion was rejected on October 6, 1985. The trial was held on November 25, 1985. On February 4, 1986, Drospo was convicted on the count under paragraph 38(1)(a) and acquitted on the count under paragraph 38(1)(b). On March 4, 1986, the company was fined $2 000. The Crown has sought leave to appeal the sentence.

(13) *Lori-Ann Mfg. Inc. — Women's Wear*

This inquiry commenced in March 1983 following receipt of a complaint from a retailer that the manufacturer had refused to supply him because of his low pricing policy. During the inquiry the records of the company were examined.

On September 23, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(b) was laid at Montreal on June 20, 1984, against Compagnie Manufacturière Lori-Ann Inc. and its agent, Les Entreprises DDN Inc. The trial was held at Montréal on December 17, 1984, and on June 14, 1985, both accused were convicted. On February 7, 1986, Les Entreprises DDN Inc. was fined $1 000. Compagnie Manufacturière Lori-Ann Inc. appealed the conviction but a date for hearing of the appeal has not yet been set.

(14) *MCTR Distributors Ltd. — Video Cameras*

This inquiry commenced in December 1983 following a complaint from a Winnipeg retailer alleging that a distributor of video cameras had refused to supply him because of his low pricing policy. During the inquiry the records of the distributor were examined.

On March 23, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(b) was laid at Winnipeg on June 4, 1984, against MCTR Distributors Ltd. At the preliminary inquiry on December 11, 1984, the accused was ordered to stand trial. The trial commenced on June 19, 1985, and the accused was acquitted.

(15) *Tommy & Lefebvre Investments Ltd. — Sporting Goods*

This inquiry commenced in August 1981 as a result of documents obtained in a search at the premises of Salomon Sports Canada Ltd. During the inquiry the records of the company were examined and oral examinations were held pursuant to section 17.

On August 10, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(a) and one count under subsection 38(6) was laid at Ottawa on July 24, 1984, against Tommy & Lefebvre Investments Ltd. and John Lennox. On April 11, 1985, the accused were acquitted.

(16) *Rossignol Skis*

This inquiry commenced in April 1982 following receipt of complaints from retailers that Skis Rossignol Canada Limitée had refused to supply them with skis because of their low pricing policy. During the inquiry the records of the company were examined.

On June 30, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing six counts under paragraphs 38(1)(a) and 38(1)(b) was laid at Montréal on August 1, 1984, against a federally incorporated company that had done business under the names Raymond Lanctôt Ltée and Société de Distribution Rossignol du Canada Ltée.

On January 11, 1985, the Federal Court heard a challenge to the search of the company based on the fact that the search under section 10 was conducted after the Charter of Rights and Freedoms came into force and was therefore illegal pursuant to the *Southam* decision. On February 22, 1985, the Court ruled the search invalid but allowed the Attorney General to retain possession of certain documents required for the prosecution of this case. This decision is under appeal and the preliminary inquiry, which was scheduled for May 1985, has been postponed pending the resolution of the appeal.

(17) *Toby Industries Ltd. — Towels*

This inquiry commenced in May 1981 following receipt of a complaint alleging that James B. McGregor, a division of Toby Industries Limited, had attempted to influence upward the price at which one of its retail customers sold sheets, towels and related products that were being supplied to the customer by McGregor. During the inquiry the records of the supplier were examined.

On March 30, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing five counts under paragraph 38(1)(a) was laid at Toronto on July 26, 1984, against Toby Industries Ltd. At the preliminary inquiry on February 11, 1985, the accused was ordered to stand trial on all counts. On August 12, 1985, the accused pleaded guilty to three counts and was fined $10 000 on each count. The remaining counts were withdrawn. An Order of Prohibition was imposed on the company for a three-year period commencing August 15, 1985.

(18) *Henry Galler Inc. — Hitachi Products*

This inquiry commenced in May 1982 following receipt of complaints from two retailers alleging that Henry Galler Inc. had a policy of discouraging the advertising and sale of Hitachi products at low prices. During the inquiry the records of the company were examined.

On July 12, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(a) and two counts under paragraph 38(1)(b) was laid at Montréal on October 4, 1984, against Henry Galler Inc. Following the preliminary inquiry in January 1985, the accused was ordered to stand trial on all counts. At the outset of the trial on March 25, 1985, the company pleaded guilty to the two counts under paragraph 38(1)(b) and the Crown withdrew the count under paragraph 38(1)(a). Following argument on sentencing, the judge reserved his decision until April 23, 1985, at which time the company was fined $10 000 on each of the two counts.

(19) *Daniel Hechter Jeans*

This inquiry commenced in September 1981 following receipt of a complaint from a Toronto retailer that Keystone Industries (1970) Ltd. had refused further supplies of Daniel Hechter jeanswear because of the retailer's low pricing policy. During the inquiry the records of the company were examined pursuant to section 10 of the Act.

On July 12, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. On February 27, 1985, an Information containing one count under paragraph 38(1)(a) and two counts under paragraph 38(1)(b) of the Act was laid at Montréal against Keystone Industries (1970) Ltd. and French Dressing Fashions Inc. On August 28, 1985, fol-

lowing the preliminary inquiry, the accused companies were ordered to stand trial on the count under paragraph 38(1)(a) and on one of the counts under paragraph 38(1)(b). The trial commenced on October 31, 1985, at which time French Dressing Fashions Inc. pleaded guilty to both counts. The counts against Keystone Industries were withdrawn. On December 23, 1985, French Dressing Fashions Inc. was fined $3 000 on the count under paragraph 38(1)(a) and $5 000 on the count under paragraph 38(1)(b).

(20) *Calvin Klein Jeans*

This inquiry commenced in November 1983 following receipt of complaints from two separate retailers alleging violations of section 38 by Blue Bell Canada Inc. During the inquiry, company records were taken from the premises of Blue Bell in Toronto and its Winnipeg sales agent, Michael Gravenor Agency Ltd., pursuant to section 443 of the Criminal Code.

On December 20, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. On March 27, 1985, an Information was laid at Toronto containing one count under each of paragraphs 38(1)(a) and 38(1)(b). Blue Bell Canada Inc. and its vice-president of marketing, Michael Corson, were jointly charged on both counts. In addition, its Sudbury sales agent Mel Kastner was jointly charged on the count under paragraph 38(1)(a) and Michael Gravenor Agency Ltd. was jointly charged on the count under paragraph 38(1)(b). Following the preliminary inquiry on October 21, 1985, Michael Corson was discharged on both counts. The remaining accused were ordered to stand trial on both counts. The trial was scheduled to commence on May 26, 1986.

(21) *Lenbrook Industries Ltd. — Stereo Equipment*

This inquiry commenced in October 1982 following receipt of a complaint from a Toronto retailer that Lenbrook Industries Ltd. had attempted to influence upward the price at which he sold stereo equipment. During the inquiry the records of the company were examined.

On December 13, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing two counts under paragraph 38(1)(a) was laid at Toronto on April 26, 1985, against Lenbrook Industries Ltd. On November 25, 1985, following the preliminary inquiry, the accused was ordered to stand trial on both counts.

The trial is scheduled to commence on November 24, 1986.

(22) *Griffith Saddlery & Leather Limited — Equestrian Products*

This inquiry commenced in August 1984 following receipt of complaints from two Ontario retailers alleging that Griffith Saddlery & Leather Limited had refused to supply equestrian products because of their low pricing policies. During the inquiry the records of the distributor were examined.

On February 5, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing two counts under paragraph 38(1)(b) was laid at Stratford, Ontario on June 10, 1985, against Griffith Saddlery & Leather Limited. The company waived the preliminary inquiry. The trial commenced on September 20, 1985, and was scheduled to continue on April 11, 1986.

(23) *Zenith Radio Canada — T.V. and Related Products*

This inquiry commenced in January 1982 following receipt of a complaint from a Toronto retailer that he had been refused further supplies of Zenith televisions, stereos and video products because of his low pricing policy. During the inquiry the records of the supplier were examined.

On December 21, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing four counts under paragraph 38(1)(a) and four counts under paragraph 38(1)(b) was laid on July 4, 1985, at Toronto against Zenith Radio Canada Ltd. The preliminary inquiry was scheduled to commence on May 26, 1986.

(24) *Gyrfalcon Corporation — Art Prints*

This inquiry commenced in June 1983 following a complaint from a Toronto retailer that Gyrfalcon Corporation, carrying on business as Nature's Scene, had refused to supply him with limited edition art prints due to his low pricing policy. During the inquiry the records of the supplier were examined pursuant to section 443 of the Criminal Code.

On March 28, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing four counts under paragraph 38(1)(a), three counts under paragraph 38(1)(b) and one count under subsection 38(6) of the Act was laid at Brampton, Ontario, against Gyrfalcon Corporation on July 23, 1985. At the outset of the preliminary inquiry on February 10, 1986, an additional count was laid against Gyrfalcon Corporation under paragraph 38(1)(a). The preliminary inquiry was adjourned to May 12, 1986.

(25) *North Sailing Products Limited — Sailboat Accessories*

This inquiry commenced in November 1984 following receipt of a complaint from a Hamilton retailer alleging that North Sailing Products Limited had refused to supply or otherwise discriminated against him because of his low pricing policy, and had also attempted to influence upward the price at which he sold sailboat accessories. During the inquiry the records of the supplier were examined.

On April 9, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Toronto on July 15, 1985, against North Sailing Products Limited.

The preliminary inquiry was held on December 2, 1985, and the company was ordered to stand trial on both counts. The trial is scheduled to commence on October 6, 1986.

(26) *Radex Ltée/Radex Ltd. — Home Appliances*

This inquiry commenced in November 1984 following receipt of complaints from Montréal-area retailers that they had been cut off by a distributor of home appliances. During the inquiry the records of the distributor were examined.

On June 28, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Montréal on October 16, 1985, against Radex Ltée/Radex Ltd. At the preliminary inquiry on March 27, 1986, Radex Ltée/Radex Ltd. pleaded guilty to the count under paragraph 38(1)(a) and was convicted and fined $7 500. The Crown withdrew the count under paragraph 38(1)(b).

(27) *Raymond Lanctôt (1982) Limitée — Sunglasses*

This inquiry commenced in June 1984 following receipt of a complaint from a Calgary retailer that it had been refused supply of Vaurnet sunglasses because of its low pricing policy. During the inquiry the records of the distributor were examined.

On August 27, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(b) was laid at Montréal against Raymond Lanctôt (1982) Limitée and Diane Lanctôt, an officer of the company. The preliminary inquiry was held on February 13, 1986, and the accused were ordered to stand trial. On February 20, 1986, Raymond Lanctôt (1982) Limited filed a motion of certiorari in the Québec Superior Court to overturn the decision made at the preliminary inquiry. This motion was scheduled to be heard on April 21, 1986.

(28) *Henry Galler Inc. — Hitachi Products*

This inquiry commenced in May 1985 following receipt of a complaint by a retailer in Kelowna, British Columbia, that Henry Galler Inc. had terminated his franchise for Hitachi electronic products because of his low pricing policy. In June 1985, the records of the supplier were examined under section 443 of the Criminal Code.

On August 2, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. On February 25, 1986, an Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Montréal against Henry Galler Inc. At the end of the fiscal year, the date for the preliminary inquiry had not been set.

(29) *Villeroy & Boch Tableware Ltd. — Tableware*

This inquiry commenced in July 1985 following receipt of a complaint from an Edmonton retailer that Villeroy & Boch Tableware Ltd. had refused to supply the retailer with tableware products because of the retailer's low pricing policy.

Searches were conducted in July 1985 in North York, Ontario and North Vancouver, British Columbia, pursuant to section 443 of the Criminal Code.

On December 16, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(b) of the Act was laid at Edmonton on March 18, 1986, against Villeroy & Boch Tableware Ltd. At the end of the fiscal year, the date for the preliminary inquiry had not been set.

(30) *Footwear*

This inquiry commenced in July 1979 following receipt of complaints from four footwear retailers to the effect that a major supplier of footwear was engaging in a policy of price maintenance. During the inquiry the records of the supplier were examined. On November 13, 1981, the evidence in the inquiry was referred to the Attorney General of Canada. Following a review of the evidence, the Attorney General concluded in May 1985 that a prosecution was not warranted.

(31) *Vacuum Cleaner Parts and Machines*

This inquiry was commenced in November 1982 following receipt of a complaint from a retailer that a distributor of vacuum cleaners would only supply him if he sold the machine at suggested list prices.

During the course of the inquiry the records of two vacuum cleaner distributors were examined. On April 11, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. Following an initial review of the evidence the Attorney General requested that additional evidence be gathered. However, the requested evidence could not be obtained and as a result, the Attorney General concluded in May 1985 that a prosecution was not warranted.

(32) *Air Bed Mattresses*

This inquiry commenced in December 1984 following receipt of a complaint from a retailer that a manufacturer of air bed mattresses had refused to continue to supply him with the product because of his low pricing policy.

During the inquiry the records of the manufacturer were examined pursuant to section 443 of the Criminal Code. On January 16, 1986, the evidence in the inquiry was referred to the Attorney General of Canada. Following a review of the evidence the Attorney General concluded in March 1986 that the evidence was insufficient to support a prosecution.

3. Applications by the Director to the Restrictive Trade Practices Commission under Part IV.1

No applications were made under Part IV.1 during the year.

4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act

SECTION 31.2

(1) *Stove Timers*

This inquiry was formally commenced in July 1985 following receipt of a complaint from a company engaged in the repair of appliance timers. The complainant reported that his business was being substantially affected due to his inability to obtain component stove timer parts from a major manufacturer of stove timers. In addition to a detailed analysis of the extensive information provided by the complainant, several interviews were conducted with individuals knowledgeable of the industry. The information obtained by the Director gave him reason to believe that grounds existed for the issuance of a remedial order by the Restrictive Trade Practices Commission under section 31.2.

In August 1985 the Attorney General of Canada was asked for assistance in preparing an application to the Commission. However, it was subsequently learned that in addition to not supplying component parts to outside repair facilities, the manufacturer concerned had ceased performing its own in-house repairs of timers. In light of this change in facts, it was concluded that section 31.2 would not be applicable. The Director therefore discontinued the inquiry in March 1986 and subsequently reported his decision to the Minister.

(2) *Builders Hardware*

This inquiry commenced in July 1982 following receipt of a complaint from a building hardware supplier alleging that his business was substantially affected because of refusals to supply by a manufacturer of door locks and a manufacturer of door openers. Information provided by the complainant gave the Director reason to believe that grounds existed for the granting of an order by the Restrictive Trade Practices Commission under section 31.2 of the Act. During the course of the inquiry the records of the companies were examined.

The information obtained during the inquiry indicated that there were legitimate reasons arising from previous business dealings between the two manufacturers and the complainant to justify the refusals to supply. In addition, the information did not establish either that the complainant was substantially affected by his inability to obtain the products in question or that there was insufficient competition among the manufacturers of these products.

On the basis of the foregoing, the Director concluded that the matter did not warrant further inquiry. Accordingly, the matter was discontinued and reported to the Minister on April 9, 1985.

SECTION 32

(3) *Prescription Drugs*

This inquiry commenced in March 1985 following receipt of an application under section 7 of the Act from six Canadian residents alleging that the Minister of Consumer and Corporate Affairs Canada, the Pharmaceutical Manufacturers Association of Canada and the Canadian Drug Manufacturers Association "...are about to or have conspired, combined, agreed or arranged to prevent, limit or lessen unduly the manufacture or production of pharmaceuticals...contrary to subsection 32(1) of the Act." This matter became public when the applicants advised the press that they had made an application to the Director.

Based on the information gathered during the course of his investigation, it was the Director's opinion that while the parties in question did enter into an agreement, it was not such as to unduly lessen competition in the market for pharmaceutical products. On this basis the Director concluded that no offence had occurred under the Act and that further investigation was not warranted. Accordingly, the matter was discontinued and reported to the Minister on June 3, 1985.

(4) *Automobile Radiators and Radiator Cores*

This inquiry commenced in October 1981 as a result of information obtained by the Director from several sources which provided reason to believe that the prices charged by radiator service firms in a Canadian metropolitan area were the result of an agreement facilitated by a local business association. In addition, the Director was also in possession of information that some association members were attempting to influence the retail prices of non-member firms. As a result, the premises of the association and several member firms were searched in March 1982 pursuant to section 10 orders. Subsequently in November-December 1983, section 17 oral examinations were held to clarify certain ambiguities in the documentary evidence.

The documentary and oral evidence thus obtained indicated that the association provided a forum for discussions among its members with respect to price and other aspects of competition. However, there was insufficient evidence to prove beyond a reasonable doubt that these discussions resulted in an agreement or arrangement in contravention of section 32 of the Act. In addition, no evidence was obtained to support an offence under section 38 of the Act, as any attempts to influence prices upward fell short of the means proscribed within that particular provision.

As a result, the Director concluded that the matter did not warrant further inquiry and it was discontinued in March 1986. The discontinuance was subsequently reported to the Minister.

SECTION 33

(5) *Fleet Aerospace Corporation and Fathom Oceanology Limited — Sonar Handling Equipment*

This inquiry was initiated in March 1985 when it came to the Director's attention that Fleet Aerospace Corporation was attempting to acquire Fathom Oceanology Limited. Both companies were major suppliers to the Department of National Defence of sonar handling equipment. Details of the Director's investigation appear at page 38 of the 1985 Annual Report.

Following the decision of the Federal Court to deny the application of the Attorney General for an interim injunction under section 29.1 of the Act, the Director conducted a number of additional interviews with individuals knowledgeable about the sonar handling equipment market. Based on the information obtained during these interviews, the Director concluded that there was no evidence that the acquisition would lessen competition to the detriment of the public and therefore that no offence under section 33 of the Act had occurred.

The inquiry was accordingly discontinued and reported to the Minister on March 27, 1986.

SECTION 38

(6) *Motorcycle Accessories*

This inquiry commenced in June 1983 following receipt of a complaint from a retailer that he had been refused supplies of motorcycle accessories because of his low pricing policy and also as a result of pressure on the supplier from three of the retailer's competitors.

Oral examinations were held in October 1983. Subsequently, a number of interviews were conducted with individuals involved in this industry. The evidence suggested that there were legitimate reasons for the refusal to supply that did not relate to the pricing of the complainant. There was no evidence of pressure on the supplier from the complainant's competitors. As a result, the Director concluded that the matter did not warrant further inquiry. Accordingly, the matter was discontinued and reported to the Minister on March 27, 1986.

5. Director's Representations to Regulatory Boards

(1) *Canadian Import Tribunal — Surgical Tapes*

On August 6, 1985, the Department of National Revenue made a preliminary determination of dumping with respect to the importation into Canada of surgical tapes and plasters originating in Japan. The decision was based on an investigation carried out by the Department following receipt of a complaint from Johnson & Johnson Inc., a Canadian manufacturer of surgical tapes, that Gainor Medical Canada Limited was dumping tapes manufactured by Nichiban Co. Ltd. of Japan into the Canadian market.

Pursuant to section 42 of the Special Import Measures Act, the Canadian Import Tribunal initiated an inquiry to determine whether the dumping of the goods in question had caused or was likely to cause material injury to production of like goods in Canada. Hearings under section 42 were held by the Tribunal commencing on November 4, 1985. While a representative of the Director of Investigation and Research monitored the hearings, the Director did not request formal intervenor's status at the proceedings. On December 4, 1985, the Tribunal ruled that dumping into Canada of surgical tape from Japan (excluding elastic and paper tapes and plasters) had not caused but was likely to cause material injury to the production in Canada of like goods.

On December 13, 1985, the Tribunal announced that it would accept oral and/or written public interest representations under subsection 45(2) of the Special Import Measures Act. The Director subsequently made a written submission to the Tribunal setting out the factors that, in his opinion, were relevant to the determination of whether an anti-dumping duty should be imposed on the importer of the Japanese tapes. In particular, the Director made reference to the following considerations:

(a) The product is an essential one which is primarily purchased by public institutions.

(b) Prior to Gainor's entry, the market was dominated by two companies each of whom had a virtual monopoly in particular segments of the market.

(c) Prices for the subject goods were higher in Canada than in the United States where the market is more competitive. Gainor's continued existence in the Canadian market was expected to have a moderating effect on price levels.

(d) The effect on Gainor of imposing anti-dumping duty was expected to be more serious than the effect on Johnson & Johnson Inc. of maintaining the status quo since Gainor's primary business was the distribution of surgical tape while Johnson & Johnson Inc. is a widely diversified company.

(e) In reference to transparent surgical tape, the Director argued that in light of the fact that Johnson & Johnson imports the manufactured tape into Canada for cutting into appropriate sized rolls and packaging, the amount of value added by such functions is minimal and warrants a complete or partial exemption of anti-dumping duty on Gainor in this tape market. A similar argument was presented with respect to zinc oxide tape on the basis that Gainor was not the lowest price seller in this segment of the market.

In response to an argument made by Johnson & Johnson Inc., the Director clarified, in a second submission to the Tribunal, his responsibilities in making submissions to public bodies such as the Tribunal and further reiterated his opinion that the Tribunal should consider competition policy issues in its public interest deliberations under subsection 45(2) of the Special Import Measures Act.

On February 13, 1986, the Tribunal ruled that, after examining the public interest submissions, it was not of the opinion that the amount or level of anti-dumping duty imposed as a result of its finding of likelihood of material injury should be altered in any way.

6. Other Matters

(1) *Business Forms*

It has come to the public's attention that there exists an inquiry into the sale and supply of business forms in the prairies region. This inquiry became public as a result of proceedings before the Saskatchewan Court of Queen's Bench concerning the application of the Charter of Rights and Freedoms to oral examinations before the Restrictive Trade Practices Commission pursuant to section 17 of the Act. On July 7, 1982, the Court issued an interim injunction to prevent any further oral examinations in Regina relating to this particular inquiry, until such time as the Court could consider the Charter matter. On December 1, 1983, the Saskatchewan Court of Queen's Bench ruled that section 17 of the Act is inconsistent with section 7 of the Charter of Rights and Freedoms and is, therefore, of no force or effect. The Court ruled, however, that section 45 of the Act is not inconsistent with the Charter. On December 12, 1983, the Crown filed an appeal with respect to the ruling on section 17. At the end of the current fiscal year, no date had been set for hearing the appeal.

(2) *Flat Rolled Steel and Related Products*

It has come to the public's attention that there exists an inquiry under section 32 of the Act into the production, manufacture, purchase, sale and supply of flat rolled steel, plate steel bar and structural steel and related products. This inquiry became public as a result of proceedings before the Federal Court with respect to an application by 24 companies and individuals under section 18 of the Federal Court Act for prohibition, certiorari and mandamus against the Restrictive Trade Practices Commission, the Director and the hearing officer. This action sought to overturn certain decisions or rulings that occurred in conjunction with oral examinations upon oath pursuant to subsection 17(1) of the Act. The rulings of the Federal Court were appealed by both the Applicants and the Respondents to the Federal Court of Appeal, which on December 15, 1981, reversed the decision of the Trial Division. On March 15, 1982, the Supreme Court of Canada granted leave to appeal the decision of the Federal Court of Appeal. This case was heard on October 26, 1984, and a decision is pending. These proceedings are more fully reported in the 1982 Annual Report at page 19 (*Irvine et al. v. RTPC et al.*, [1982] 1 F.C. 72.)

(3) *Municipal Castings*

In March 1984 representatives of the Director searched the premises of a Surrey, B.C., municipal castings supplier and its affiliates pursuant to section 443 of the Criminal Code. This inquiry concerned an alleged violation of the monopoly provisions of the Act.

Prior to completion of the search, the companies petitioned the Supreme Court of British Columbia by way of certiorari to quash the search warrants, and the Court issued an interim Order placing the seized documents in the custody of the issuing Justice of the Peace. In April 1984 the Court allowed the warrants to stand except for certain portions, which it quashed or amended. This judgment was appealed by the Crown and the Petitioners.

In February 1985 the Court of Appeal of British Columbia quashed the warrants in their entirety because the lower court had amended them when it had no statutory authority to do so. Although the authority to sever portions in a search warrant lies within the jurisdiction of the superior court, the capacity to amend a search warrant lies solely within the jurisdiction of the issuing Justice of the Peace. The Petitioners immediately applied to the Court of Appeal to have their documents returned, while the Crown requested that the documents remain in the custody of the Justice of the Peace until it could obtain a revised warrant to seize whatever documents were covered by it.

In March 1985 the Court of Appeal ordered that the documents be returned to the Petitioners unless the Crown obtained new warrants within a specified period, in which case it would be permitted to seize these documents. Prior to being served a new warrant, the Petitioners were granted a stay of proceedings and the Court of Appeal agreed to hear their motion to vary or discharge its Order.

In June 1985 the Court of Appeal convened to hear the Petitioner's motion. However, no review was conducted because the Court concluded that it had no "inherent jurisdiction" under the Criminal Code to vary or discharge such an Order. This matter is scheduled to be re-heard in April 1986.

(4) *Asphalt and Asphalt Paving — Windsor*

This inquiry commenced in October 1984 following receipt of information by the Director that a number of asphalt producers and asphalt paving companies were involved in collusive and exclusionary actions contrary to sections 32.2, 33 and 34. During the inquiry, the records of four firms were examined pursuant to section 443 of the Criminal Code. The matter became public when an application to quash the search warrant was presented in the Divisional Court of Ontario. On October 18, 1984, Mr. Justice McRae adjourned the application for argument in the Divisional Court. This matter was scheduled to be heard in the Divisional Court in Toronto on June 9 and 10, 1986.

(5) *Contract Hardware*

It has come to the public's attention that there exists an inquiry into the sale and supply of contract hardware in the Toronto area. This inquiry became public as a result of a challenge by one of the companies under inquiry relating to the validity of the warrant obtained under section 443 of the Criminal Code.

On January 23, 1985, the Supreme Court of Ontario found the warrants invalid and ordered the return of seized documents which had been placed in the custody of the Court.

The decision was appealed to the Ontario Court of Appeal which, on January 25, 1985, stayed the order pending the outcome of the appeal. On December 23, 1985, the Ontario Court of Appeal found the warrant invalid in part but allowed the Crown time to obtain amended warrants before the Court would release the documents.

(6) *Reinforcing Steel — Montreal*

It has come to the public's attention that there exists an inquiry into discriminatory pricing activities with competing fabricators in the Quebec market. During the inquiry, the corporate records of one company were examined pursuant to section 443 of the Criminal Code.

On November 18, 1985, an application for oral examinations under section 17 was approved by the Restrictive Trade Practices Commission, and the matter was scheduled for December 17, 1985. However, on December 16, 1985, a statement of claim was brought before the Federal Court of Canada in Toronto by a company whose conduct was being inquired into, challenging the right to conduct hearings under the Act. Arguments were heard in the Federal Court on January 17 and 30, 1986. The Director is currently awaiting the decision on this matter.

(7) *Ready Mix Concrete*

It has come to the public's attention that there exists an inquiry into the sale and supply of ready mix concrete under paragraph 34(1)(c) of the Act. This inquiry became public as a result of proceedings in Superior Court, Criminal Division, district of Hull with respect to an application by five firms to quash search warrants obtained under section 443 of the Criminal Code. On July 4, 1984, the Court upheld the validity of these warrants subject to minor modifications. On appeal, the Québec Court of Appeal quashed the warrants on January 26, 1985, on the grounds that they were issued by a justice of the peace for the district of Hull while the appellants did not have any premises in that judicial district and that the warrants were executed in the judicial district of Montréal without being countersigned by a justice of the peace for that district. Leave to appeal to the Supreme Court of Canada was refused in December 1985.

CHAPTER IV

RESOURCES BRANCH

1. Activities

The Resources Branch is responsible for the conduct of all inquiries under the Act with respect to the activities of firms in the Canadian resource industries. In this context resource industries are considered to include agriculture; fishing and all food processing; trapping and all fur processing; the forest industry, including all stages of manufacture and distribution of wood and wood products, including pulp and paper; the production, mining and primary processing of all minerals; and the production and distribution of energy, including electrical power, coal and petroleum products.

The Branch analyzes complaints and evidence from various sources pertaining to allegedly anticompetitive situations in resource sectors and, when warranted, conducts an inquiry. Any apparent restriction of competition is examined in order to determine whether there is reason to believe that a violation of Part V of the Act has occurred or that grounds exist for the making of an order by the Commission under Part IV.1 of the Act.

The Branch is responsible for assessing the competitive implications of specific regulatory activities as they pertain to the resource industries. In this context, pursuant to section 27.1 of the Act, the Branch assists the Director with his representations before federal regulatory boards in respect of the maintenance of competition in connection with matters being heard by such boards.

The Branch is also concerned with inquiries relating to the patent and trade mark provisions of section 29 of the Act in relation to the resource industries. As well, it maintains a general surveillance of competitive activities and competition policy issues in those industries for which it is responsible so as to identify problem areas requiring analysis or investigation. Further, the Resources Branch participates in interdepartmental committees and provides input into, and analysis of, competition issues arising from acquisitions under review by Investment Canada.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act

SECTION 32

(1) *Hogs — Alberta*

This inquiry commenced in February 1980 following receipt of information alleging that the major meat packers operating in Alberta had agreed to share slaughter hogs offered for sale by the Alberta Pork Producers Marketing Board on a predetermined percentage basis; and to purchase slaughter hogs at an agreed price or within a given price range. It was also alleged that they agreed on prices at which pork or pork products were to be sold to the distributive market.

Documents on the premises of the Alberta Pork Producers Marketing Board were examined pursuant to section 10 of the Act in February 1980. Oral examinations pursuant to section 17 were held during 1980 and 1981 in Calgary, Edmonton, Ottawa and Toronto.

The evidence obtained in the inquiry was referred to the Attorney General of Canada on December 21, 1981. On February 19, 1982, an Information containing two counts under paragraph 32(1)(c) of the Act was laid at Calgary against Burns Foods Limited, Canada Packers Inc., Intercontinental Packers Limited, Red Deer Packers Ltd., and Swift Canadian Co. Ltd.

A revised Information (adding Gainers Limited, changing the name of another accused and deleting a third), was laid on June 24, 1982, against Burns Food Limited, Canada Packers Inc. (formerly Canada Packers Ltd.), Eschem Canada Inc. (formerly Swift Canadian Co. Ltd.), Gainers Limited and Intercontinental Packers Limited.

The preliminary inquiry commenced on January 31, 1983. On December 9, 1983, in the Provincial Court of Alberta at Calgary, three of the accused — Burns, Eschem and Gainers — waived the preliminary inquiry and pleaded guilty to a charge of conspiracy to prevent or lessen unduly competition in the purchase of slaughter hogs in the Province of Alberta for the period from December 9, 1969, to December 31, 1974. The three accused companies were each fined $125 000.

The two remaining accused, Canada Packers and Intercontinental, continued with the preliminary inquiry. The presiding judge gave his ruling on May 24, 1984. The judge ordered the two accused to stand trial in respect of a conspiracy to prevent or lessen competition unduly in relation to prices of pork and pork products sold to the distributive market, contrary to paragraph 32(1)(c) of the Act, for the period January 1, 1965, to June 30, 1976, instead of January 1, 1965, to December 31, 1978, as originally alleged by the Crown. In addition, he ruled that the evidence was not sufficient to allow a charge relating to the marketing of slaughter hogs.

The Crown, as a result of the ruling not to include the marketing of slaughter hogs in an indictment, decided to proceed by way of preferred indictment. The Attorney General of Canada, on July 18, 1984, laid charges in the Court of Queen's Bench of Alberta alleging that Canada Packers Inc. and Intercontinental Packers Limited conspired to prevent or lessen unduly competition in the marketing of slaughter hogs and pork cuts or products therefrom, contrary to paragraph 32(1)(c) of the Act.

In July 1985 Canada Packers Inc. filed a statement of claim against the Attorney General of Canada requesting (1) that portions of the indictment relating to the purchase of slaughter hogs through the Alberta Pork Producers Marketing Board be declared invalid and of no force or effect; (2) that provisions of the Criminal Code allowing the Attorney General of Canada to prefer an indictment after an accused has been discharged following a preliminary inquiry are inconsistent with the Charter of Rights and Freedoms; and, (3) an injunction restraining the Attorney General of Canada from prosecuting Canada Packers on parts of the indictment relating to the purchasing of slaughter hogs through the Alberta Pork Producers Marketing Board.

In September 1985 the Court rejected Canada Packers' statement of claim. An appeal of this decision by Canada Packers was dismissed.

The trial in this matter commenced on January 6, 1986, in the Court of Queen's Bench in Calgary and was continuing at the end of the fiscal year.

(2) *Gasoline Service Stations — Rouyn-Noranda*

This inquiry commenced in April 1982 following receipt of two complaints from Rouyn-Noranda alleging that most of the gasoline retailers operating in the area had held a meeting during which it was decided to increase retail prices. It was alleged that this agreement was implemented the following day.

Oral examinations pursuant to section 17 of the Act were held in September 1982 and January 1983. The evidence obtained in the inquiry was referred to the Attorney General of Canada in April 1983. On June 16, 1983, Informations containing one count under paragraph 32(1)(c) were laid at Rouyn against 14 gasoline retailers, one oil company agent and four oil company representatives (charges against two representatives were later withdrawn). On April 26, 1984, and May 15, 1984, an Order of Prohibition under subsection 30(2) was obtained against Paul-Emile Poirier, René Thibault, Fernand Mantha, Maks Leban, Ghislain Blanchette, Hugues Bureau, Henri-Paul Fournier, Germain Allaire, Maurice Bérubé, Raymond Rheault, Cécile Banville, the company Pétrole J.M. & B. Dupont Inc., Léo Gervais, André Provencher (all gasoline retailers), Jean-Paul Labrie (oil company agent), and Jean Dubuc

(oil company representative). On October 10, 1985, an Order of Prohibition under subsection 30(2) was obtained against Roger Poirier, the remaining oil company representative.

(3) *B.C. Tree Fruit*

This inquiry was initiated in April 1981 following receipt of an application from six Canadian residents pursuant to section 7 of the Act requesting that the marketing activities of the B.C. tree fruit industry be investigated. The applicants alleged that the organizations operating under the one-desk marketing system, to protect their dominant market position, had engaged in conduct contravening section 32 of the Act.

In May and June 1981, documents were examined on the premises of the British Columbia Tree Fruit Marketing Board, the British Columbia Fruit Growers' Association and its subsidiary companies, B.C. Tree Fruit Limited and Sun-Rype Products Limited, as well as on the premises of 14 packing houses pursuant to section 10 of the Act. The evidence obtained in the inquiry was referred to the Attorney General of Canada on March 1, 1983.

On August 31, 1983, an Information containing three counts under paragraphs 32(1)(a) and (c) of the Act was laid at Kelowna against the British Columbia Fruit Growers' Association, Charles Bernhardt, Richard Bullock, John Bullock, Nigel Taylor, Arnold Pedersen, William Dell, Westbank Orchards Limited, Creston Co-operative Packers, the Vernon Fruit Union, Lake Area Co-operative Growers Association, Naramata Co-operative Growers Exchange, Monashee Co-operative Growers Association and Kelowna Growers Co-operative. On February 13, 1984, a revised Information deleting two counts relating to the sale and supply of tree fruit was laid against the same parties. The preliminary inquiry commenced on February 13, 1984, and was completed on February 22, 1984. The presiding judge reserved his decision in this matter to March 12, 1984, on which date he ordered all the accused to stand trial. The trial commenced on April 29, 1985 and on June 28, 1985, the accused were acquitted. The Crown decided not to proceed with an appeal of the decision.

(4) *Gaspé Cure — Québec*

This inquiry commenced in January 1985 following the receipt of a complaint from a Canadian exporter who was refused supply of "Gaspé Cure" (a lightly salted fish, Gaspé style) by Exportation Gaspé Cured Inc., an export consortium formed by all producers of Gaspé Cure.

The evidence obtained during the course of the inquiry was referred to the Attorney General of Canada on August 26, 1985.

On November 18, 1985, an Information containing one count under subsection 32(1) was laid at Percé, Québec against the consortium, Exportation Gaspé Cured Inc., and the following members of the consortium and individuals, alleging that they had prevented or lessened competition unduly in the sale of Gaspé Cure:

Pêcheries Tourelles Inc.
Lelièvre, Lelièvre et Lemoignan Ltée
Poissonnerie Cloridorme Inc.
Poisson Salé Gaspésien Ltée
Pêcheries Sheehan Inc.
Poissonnerie Anse-à-Beaufils Inc.
Pêcheries Malbaie Inc.
Pêcheries de l'Anse-au-Griffon Inc.
Manigo Inc.
Pêcheries Cartier Inc.
Poissonnerie Boulay Inc.
Pêcheries Gaspésiennes Inc.
Coopérative de transformation de produits marins (Newport)
Raymond Sheehan
Gaston l'Anglais
Mark Bunton

The preliminary inquiry was set for April 13, 1986.

(5) *Rapeseed and other Non-Board Grains*

This inquiry began in July 1976 after the Director received complaints alleging an agreement among primary elevator operators to collectively determine the prices, known as street prices, they would pay producers for cereal and oilseed grains not marketed under the auspices of the Canadian Wheat Board (non-Board grains). During July and August 1976, searches under section 10 of the Act were conducted and documentary evidence was seized from the premises of twelve grain elevator companies, co-operatives, and associations.

The evidence obtained during the course of the inquiry was referred to the Attorney General of Canada in September 1981. The Attorney General's representative, after reviewing the evidence, recommended that additional evidence be obtained by the examination of witnesses under oath. As a result, in 1983, orders were issued under section 17 of the Act to a number of persons requiring their attendance to give evidence before a member of the Restrictive Trade Practices Commission. Actions were commenced in the Court of Queen's Bench to challenge several of the orders, but these were not proceeded with and the oral examinations did not take place.

In the meantime, the Director obtained further information that the practices complained of had been abandoned shortly after the commencement of the inquiry. The information disclosed the existence of independent and competitive pricing since 1976 by the companies under inquiry.

In light of all the circumstances, the Attorney General concluded, in October 1985, that prosecution or other proceedings in this matter were not warranted.

SECTION 38

(6) *Dairy Equipment — Winnipeg*

This inquiry commenced in October 1982 following receipt of a complaint from an independent operator of a refrigeration equipment repair shop in Winnipeg, Manitoba, alleging that Dairy Supplies, Limited, the exclusive distributor of machines and parts manufactured by Taylor Freezer, discriminated in the sale and supply of parts required to service the Taylor line of equipment, contrary to paragraph 38(1)(b) of the Act.

Documents on the premises of Dairy Supplies, Limited were seized on January 20, 1983. Oral examinations pursuant to section 17 of the Act were held on January 9 and 10, 1984, in Winnipeg.

On December 3, 1984, the evidence obtained in the inquiry was referred to the Attorney General of Canada. On February 13, 1985, an Information containing one count under paragraph 38(1)(b) of the Act was laid at Winnipeg against Dairy Supplies, Limited. At the preliminary inquiry on November 7, 1985, the accused were ordered to stand trial. The trial was scheduled for June 3, 1986.

(7) *Gasoline — Meadow Lake, Saskatchewan*

This inquiry commenced in April 1984 following receipt of a complaint from the RCMP in Meadow Lake, Saskatchewan, concerning a gasoline price war among service station operators. It was alleged the price war was designed to discipline an independent operator because of his low pricing policy. During the inquiry, extensive interviews with service station operators and independent witnesses in Meadow Lake were conducted.

In March 1985 the evidence obtained in the inquiry was referred to the Attorney General of Canada. On July 4, 1985, an Information alleging violations of paragraph 38(1)(a) and subsection 38(6) of the Act was laid at Meadow Lake. Kenneth Laird and Sundance Service Ltd. were charged with two counts under paragraph 38(1)(a). Brad Stevenot, Triple "A" Enterprises Ltd., Patrick Lutz and P & F Holdings Ltd. were each charged with one count under paragraph 38(1)(a). Kenneth Laird, Sundance Service Ltd., James Kerr and the

Meadow Lake Consumers Co-operative Association were each charged with one count under subsection 38(6). The preliminary inquiry was held at Meadow Lake on September 16, 1985; Patrick Lutz and P & F Holdings were discharged on the count under paragraph 38(1)(a) and Kenneth Laird and Sundance Service were discharged on the count under subsection 38(6). The accused were ordered to stand trial on the remaining counts.

The trial will be scheduled for a fall 1986 hearing in North Battleford, Saskatchewan.

(8) *Sunoco Inc. — Gasoline*

This inquiry commenced in March 1985 following receipt of a complaint from a Sunoco dealer in Markham, Ontario, that Sunoco was engaged in a policy of resale price maintenance.

Documents on the premises of Sunoco Inc. in Toronto were examined on March 15, 1985, pursuant to section 443 of the Criminal Code. On May 15, 1985, the evidence obtained in the inquiry was referred to the Attorney General of Canada. On May 24, 1985, an Information containing one count under paragraph 38(1)(a) and one count under paragraph 38(1)(b) of the Act was laid at Toronto against Sunoco Inc.

The preliminary inquiry was held at Toronto on September 5 and 6, 1985, and Sunoco Inc. was ordered to stand trial on both counts. The trial was scheduled to commence on May 12, 1986.

(9) *Bread — Cornwall*

This inquiry commenced on January 9, 1984, following the receipt of information from a Cornwall grocer alleging that George Lanthier & Fils Limitée was enforcing resale price maintenance on a line of bread and threatening to withhold supply if the complainant did not comply.

Hearings under section 17 of the Act were conducted in Ottawa on May 13, 1985. The evidence obtained in the inquiry was referred to the Attorney General of Canada on September 26, 1985. On November 21, 1985, an Information containing one count under paragraph 38(1)(a) against George Lanthier & Fils Limitée was laid at Cornwall, Ontario. The preliminary inquiry was scheduled for May 11, 1986.

3. Applications by the Director to the Restrictive Trade Practices Commission under Part IV.1

There were no applications under this Part during the year.

4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act

There were no discontinued inquiries during the year.

5. Director's Representations to Regulatory Boards

(1) *National Energy Board Hearings — TransCanada Pipeline Limited*

At page 43 of the 1985 Annual Report, it was reported that proceedings before the National Energy Board (NEB) to review the toll design and methodology of TransCanada PipeLines Limited were terminated pending further clarification of the federal government's

policy on the marketing and pricing of natural gas. That policy was announced October 31, 1985.

In the interim, TransCanada proceeded with its annual rate hearing application. Hearings commenced on April 24, 1985. The Director intervened to contest the retention of a tariff provision that prevented independent shippers from displacing sales of natural gas in TransCanada's traditional eastern markets. The Director argued, firstly, that the NEB lacked the jurisdiction to, in effect, regulate the marketing activities of TransCanada, and, secondly, that the operation of the tariff provision prevented the competitive marketing of natural gas.

In September 1985 the NEB in its Reasons for Decision declared that the tariff provision was not unreasonable in the circumstances at the time. However, the Board was mindful that discussions were on-going between the federal and provincial governments and industry regarding changes to interprovincial gas marketing policies. The Board specifically stated that the outcome of these discussions may have an impact on its ruling.

Subsequent to the Board's decision, the federal government and the gas-producing provinces reached an agreement on October 31, 1985, on the deregulation of natural gas. The Agreement on Natural Gas Markets and Prices states as its intent the creation of conditions for a more flexible and market-oriented pricing regime to foster a competitive market in natural gas. The Agreement recognized several impediments to achieving a freely competitive market.

The Agreement directed the Board to examine whether the decision taken in the 1985 toll hearing was still appropriate in light of the new policy. The Director filed a notice of intervention in December 1985. At hearings which commenced on January 13, 1986, two technical issues were specifically addressed by the Board.

The first related to the incidence of transportation charges for the carriage of gas from western Canada to eastern consumers. Under deregulation the introduction of purchases of gas by end-users from independent western producers would disrupt the traditional sales patterns between TransCanada and its provincial distributor customers. The Director urged the Board to amend current tariff provisions to prevent the incidence of a disproportionate recovery of transportation costs from these new buyers in order to facilitate the development of competitive sales.

The second issue addressed by the Board was whether a change in access provisions could be accommodated in light of contractual relations between TransCanada and its traditional producer suppliers. Under these arrangements, TransCanada, the producers and two consortia of banks (TOPGAS) had refinanced TransCanada debt incurred by way of prepayment for gas supplies under its purchase contracts. TransCanada argued that the carrying costs on the initial debt of $2.7 billion should be borne on a proportional basis by any new sales that supplanted sales that TransCanada currently had under contract with its distributor customers.

The Director, in opposing this position, urged the Board to consider the effect of such sharing on the development of a competitive market. The Director maintained that such sharing was not necessary to allow TransCanada's producers to compete, and in fact, the imposition of these charges on independent sales would inhibit introduction of competitive gas supplies and thereby significantly reduce the benefits intended to flow from natural gas deregulation.

Hearings were scheduled to be completed on April 17, 1986.

(2) *Anti-dumping Tribunal — Refined Sugar*

In April 1984 the Department of National Revenue, following receipt of a complaint from the Canadian Sugar Institute, made a preliminary determination that U.S. refined sugar had been dumped in Canada between April and December 1983. Upon receipt of the Notice of Preliminary Determination, the Anti-dumping Tribunal initiated an inquiry pursuant to section 16 of the Anti-dumping Act to ascertain whether the dumping of refined sugar, originating in or exported from the United States of America, has caused, is causing, or is likely to

cause material injury to production of like goods in Canada. The Anti-dumping Tribunal scheduled hearings into this matter for June 1984.

The Director submitted that the injury caused was *de minimus* and not material. In support of his argument he compared the volume of dumped refined sugar and the volume of domestic production of like goods; the volume of dumped goods and the volume of apparent domestic consumption of like goods; the relative import and export trade flows of refined sugar and like goods; and the relative levels and sizes of domestic and foreign refinery margins. He also submitted that it is of particular importance to preserve such competition as was offered by the limited quantities of "dumped" imports given the oligopolistic structure of the domestic refined sugar industry, which historically has not been exposed to competition from foreign sources.

On July 23, 1984, the Anti-dumping Tribunal ruled that dumping into Canada of refined sugar from the United States of America has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods. In August 1984 the Canadian Sugar Institute filed an application in the Federal Court of Appeal, pursuant to the provisions of section 28 of the Federal Court Act, to review and set aside the decision of the Anti-dumping Tribunal made on July 23, 1984. On July 2, 1985, the Canadian Sugar Institute withdrew its application. The Director gave his consent to the withdrawl on August 27, 1985.

(3) *National Energy Board — Review of the Tariffs of Interprovincial Pipe Line Limited relating to the apportionment of space among shippers on its pipeline system*

Hearings before the NEB with respect to the apportionment of space among crude oil shippers on the Interprovincial Pipe Line system commenced on May 27, 1985. In April 1985 the demand to ship crude oil on Interprovincial exceeded the capacity of the pipeline, resulting in the shutting in of light crude oil in Western Canada. When the NEB convened its hearings it was anticipated that a condition of under-capacity would exist for at least a year and a half, until Interprovincial completed planned expansions to its pipeline system.

The issue before the Board was whether to retain, modify or replace the existing method of apportionment based upon historic shipments. A further issue was whether the historic method of apportionment was compatible with the Western Accord, which provided for the deregulation of the petroleum industry effective June 1, 1985.

The Director's concern in intervening was that the historic method of apportionment could have anti-competitive consequences that would frustrate the government's initiatives to create open markets. Interprovincial and a number of other intervenors urged the Board to adopt variations of a current tender system of apportionment based upon monthly nominations made by shippers. Other interested parties argued for the retention of the historic method of apportionment.

The Director argued that a system based on current tenders would be least restrictive of competition and would best facilitate the free market objectives of the Western Accord. In July 1985 the Board made its decision, concluding that: "In light of the evidence and with the elimination of a system of administered prices and the introduction of a more relaxed regulatory environment the Board has concluded that use of the historical apportionment method is no longer appropriate." Accordingly, the Board ruled that an apportionment system based on current tenders be adopted, with certain safeguards to assure supply to areas truly dependent on Canadian feedstocks.

6. Activities Related to Agricultural Policy

During the year representatives of the Director continued to take an active part in interdepartmental discussions on proposed changes to the National Farm Products Marketing Agencies Act, the Agricultural Stabilization Act, dairy import controls, domestic dairy policy

and wheat export pricing policy. In addition, members of the Director's staff were involved in interdepartmental deliberations related to the pricing, registration and licensing of pesticides; import controls on beef and veal; the drafting of Plant Breeders' Rights legislation; review of supplementary import guidelines; alternative global import quota allocation systems; and industry-based inspection/monitoring systems for quality standard enforcement activity in food processing.

7. Other Matters

(1) *Petroleum Industry — Section 47*

This inquiry was referred to in previous annual reports.

Since the hearings commenced in December 1981, more than 200 witnesses have appeared before the Restrictive Trade Practices Commission. Final Arguments were filed in 1984, and final written submissions from the oil companies and the Director with respect to remedies were received by the Commission in August 1984.

On September 5, 1985, the Commission announced that it would hold public hearings with regard to three matters that had arisen since the completion of its general hearings and that the Commission viewed as having important implications for its report to the Minister. The issues on which the Commission sought evidence were the following:

(a) Structural changes in the Canadian petroleum industry associated with Petro-Canada's purchase of assets from Gulf Canada Limited.

(b) The change in the mandate that has been given to Petro-Canada that it will no longer function as an instrument in the pursuit of the Government's policy objectives, but instead will seek to operate in a commercial, private sector fashion with emphasis on profitability and maximizing the return on the Government's investment.

(c) Adoption or possible adoption by refiners of so-called "rack-pricing" systems for the sale and distribution of their products.

The Commission held hearings during the week of October 15, 1985. Following the completion of these hearings, the Commission received written submissions from a number of interested parties, including the Director, with respect to the evidence.

On January 13, 1986, the Minister wrote to the Chairman of the Commission requesting that the Commission consider in its report "the balance of supply and demand in the market for gasoline and other refined petroleum products which confronts Québec-based refineries." The Minister's request arose out of the circumstances surrounding the acquisition and subsequent closure of Gulf's Montreal East refinery by Ultramar Canada. The Minister requested the Director to provide the Commission with all of the relevant information that formed the basis of a report that the Director made to him concerning the transaction between Gulf and Ultramar. The Director provided the Commission with a written submission on February 17, 1986. The Commission also received information and written submissions from the Department of Energy, Mines and Resources and a number of oil companies on the Quebec refinery situation. The Commission's report was expected in the spring of 1986.

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(c) Adoption or possible adoption by refiners of so-called "rack-pricing" systems for the sale and distribution of their products.

The Commission held hearings during the week of October 15, 1985. Following the completion of these hearings, the Commission received written submissions from a number of interested parties, including the Director, with respect to the evidence.

On January 13, 1986, the Minister wrote to the Chairman of the Commission requesting that the Commission consider in its report "the balance of supply and demand in the market for gasoline and other refined petroleum products which confronts Québec-based refineries." The Minister's request arose out of the circumstances surrounding the acquisition and subsequent closure of Gulf's Montreal East refinery by Ultramar Canada. The Minister requested the Director to provide the Commission with all of the relevant information that formed the basis of a report that the Director made to him concerning the transaction between Gulf and Ultramar. The Director provided the Commission with a written submission on February 17, 1986. The Commission also received information and written submissions from the Department of Energy, Mines and Resources and a number of oil companies on the Quebec refinery situation. The Commission's report was expected in the spring of 1986.

CHAPTER V

SERVICES BRANCH

1. Activities

The main function of the Services Branch is to analyze complaints and other evidence from a broad variety of sources with respect to alleged restrictions of competition in the service and distribution industries and to conduct inquiries into those situations where inquiry is warranted. The Services Branch is responsible for all wholesale and retail distribution activities not otherwise assigned to the Manufacturing or Resources Branch, and for all other services traditionally regarded as such. These include finance, insurance and business, professional and personal services of all kinds, but do not include the distributing sectors of vertically integrated industries, in which the major activity of the industry falls within the responsibilities of the Manufacturing or Resources Branch. In addition, the Services Branch is not responsible for construction, communications, or distribution of forestry or energy products research, or for representations to federal boards, commissions or other tribunals pursuant to section 27.1 of the Act that fall within the responsibilities of the Regulated Sector Branch.

The Branch deals with those violations of Part V of the Act that are not in the nature of misleading advertising or deceptive marketing practices, and with situations that may be reviewable under Part IV.1. It is also concerned with inquiries relating to proceedings under the patent and trade marks provisions of section 29 of the Act, and maintains a general surveillance of competitive issues and activities in Canada in those industries for which it has responsibility. In addition, it participates in interdepartmental committees and provides input with respect to competition policy in relation to proposed mergers under review by Investment Canada.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act

SECTION 32

(1) *Fort Erie Auto Body Shops*

This inquiry commenced in January 1981 following receipt of a complaint describing an agreement by 11 area body shops to fix their shop charge-out rates. During the inquiry the records of the body shops were examined.

On May 30, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 32(1)(c) was laid at Ottawa on May 17, 1984, against the following companies and individuals:

Dave Spear Limited
Climenhaga's Garage Ltd.
Don Dean Chevrolet Oldsmobile Limited
Erie Collision Limited
Ted Lloyd Pontiac-Buick Ltd.
Jon Beck carrying on business as Dufferin Motors
William Fickel carrying on business as Fickel's Body Shop
Sergio Rubesa carrying on business as Garrison Auto Body
Gerald Doan carrying on business as Jerry's Auto Body
Norman Page carrying on business as Page Auto Body
Orin Page carrying on business as Speedy Auto Body

The preliminary inquiry commenced on January 21, 1985, and was completed in mid-June 1985. On August 23, 1985, Dave Spear Limited and Don Dean Chevrolet Oldsmobile Limited were ordered to stand trial and Ted Lloyd Pontiac-Buick Ltd. was discharged. The remaining accused had waived the preliminary inquiry. The trial was scheduled to commence on April 21, 1986.

(2) *Building Supplies — Swift Current*

This inquiry commenced in June 1981 following publication of a newspaper advertisement indicating that all area lumber dealers had agreed to fix the price for delivery of supplies. During the inquiry the records of the dealers were examined.

On January 11, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information under subsection 30(2) was laid at Swift Current on September 6, 1984, against Beaver Lumber Company Limited, Revelstoke Companies Ltd., Mr. Plywood Enterprises Ltd., Swift Current Building Supplies (1970) Ltd., Pioneer Co-operative Association Limited, and Windsor Plywood (The Plywood People) Ltd.

Subsequently a new Information was laid in June 1985. The respondents were advised of the claim and motion being made therein.

At the end of the fiscal year a date for appearance had not been set.

(3) *Driving Schools — Sherbrooke*

This inquiry commenced in December 1984 following receipt of information which indicated that the driving school owners in the Sherbrooke market had met and agreed on a fixed price for driving lessons. Oral examinations commenced in Sherbrooke on April 9, 1985, but were stayed after counsel for one of the parties under investigation indicated his intention to challenge the constitutionality of the proceedings as inconsistent with the rights against self-incrimination guaranteed by section 7 of the Charter.

Nothwithstanding this development, the evidence gathered in this inquiry was referred to the Attorney General of Canada on December 4, 1985. On December 12, 1985, an Information containing one count under paragraph 32(1)(c) was laid at Sherbrooke against Ecole de Conduite Lauzon Sherbrooke Ltée, André Houle, Ecole de Conduite Asbestrie Enr., Ecole de Conduite l'Estrie Inc., and Ecole de Conduite Vel Inc. At the end of the fiscal year no date had been set for the preliminary inquiry.

SECTIONS 32 AND 38

(4) *Metropolitan Toronto Pharmacists Association*

This inquiry commenced in May 1979 upon receipt of information that the Metropolitan Toronto Pharmacists Association had agreed to implement a boycott of the third-party drug-prepayment plan administered by Green Shield Prepaid Services Inc., a major nonprofit insurer. The insurer had revised the ingredient cost paid to pharmacists for drugs to reflect the volume discounts now common in the industry, which has moved from independent pharmacists purchasing in limited quantities to buying groups and chains of outlets purchasing in bulk. As a result of the alleged boycott and other harassment techniques, the insurer was compelled to reinstate its prior schedule of fees. Information obtained in the investigation, including documentary evidence obtained under section 10 of the Act, was referred to the Attorney General of Canada on August 15, 1980.

An Information was laid on June 10, 1981, against seven individuals and the Association, alleging offences under paragraph 32(1)(c) and paragraph 38(1)(a) of the Act between March 1979 and January 1980. Subsequently, the charge under paragraph 38(1)(a) and all charges against the individuals were withdrawn. Thus, the Metropolitan Toronto Pharmacists Association was charged that it unlawfully conspired with members of the Executive of the Association and others to prevent or lessen, unduly, competition in the sale or supply of prescription drugs and pharmacists' services within Metropolitan Toronto to subscribers of Green Shield Prepaid Services Inc., contrary to paragraph 32(1)(c).

At the conclusion of the preliminary inquiry on June 25, 1982, the Association was ordered to stand trial. The trial commenced in Toronto on May 2, 1983, in the Supreme Court of Ontario. During the proceedings, the defence submitted that subsections 10(1) and 10(3) of the Combines Investigation Act were inconsistent with section 8 of the Canadian Charter of Rights and Freedoms, which guarantees that everyone has the right to be secure against unreasonable search and seizure, and were therefore of no force and effect. A further motion by the defence submitted that subsection 45(2) of the Act was invalid by reason of paragraph 11(d) of the Charter and that the documents proved to have been seized from the possession of an officer of the accused Association were, therefore, not admissible into evidence. The Court subsequently dismissed both motions.

The trial continued until May 20, 1983, at which time the court reserved judgment. On November 20, 1984, the Court rendered its decision acquitting the Association. On December 24, 1984, the Crown filed a notice of appeal. However, the appeal was subsequently abandoned by the Crown.

(5) *Notarial Services — Québec*

This matter was reported at page 52 of the 1985 Annual Report. The existence of this inquiry into the supply of notarial services in Québec was brought to the public attention following an application by the Chambre des Notaires du Québec in the Federal Court — Trial Division in 1982. On February 1, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. Following a review of the evidence the Attorney General determined in March 1986 that a prosecution was not warranted.

SECTION 32.2

(6) *Hotels — Ottawa*

This inquiry commenced in January 1985 following receipt of a complaint alleging that six major hotels in downtown Ottawa-Hull had engaged in bid-rigging of room rates for civil servants. During the inquiry the records of the companies involved were examined.

On April 10, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. On May 25, 1985, an Information containing one count under each of sections 32 and 32.2 was laid at Ottawa against the following companies:

York-Hannover Hotels Ltd., carrying on business in the City of Ottawa under the name of: The Skyline Hotel

Four Seasons Hotels Limited, carrying on business in the City of Ottawa under the name of: Four Seasons Hotel

Delta Hotels Limited, carrying on business in the City of Ottawa under the name of: Delta Ottawa

Plaza Hotels Inc., carrying on business in the City of Hull under the name of: Hôtel Plaza de la Chaudière

Commonwealth Holiday Inns of Canada Limited, carrying on business in the City of Ottawa under the name of: Holiday Inn of Ottawa-Centre

and

CN Hotels Inc., carrying on business in the City of Ottawa under the name of: Chateau Laurier Hotel.

The preliminary inquiry commenced on February 3, 1986, with one accused electing to waive the preliminary. On February 11, 1986, the five remaining companies were ordered to stand trial only on the count under section 32.

(7) *Taxis — Vancouver*

This inquiry commenced in September 1980 following receipt of a complaint from a taxi owner that the major taxi-cab companies in a particular municipality were engaged in bid-rigging activity in an attempt to prevent new companies from entering the market.

During the inquiry, documentary evidence was obtained from the premises of the taxi-cab companies pursuant to section 10 of the Act. On May 10, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. Following a review of the evidence, the Attorney General concluded that a prosecution was not warranted.

SECTION 33

(8) *Funeral Homes — Hamilton*

This inquiry commenced in December 1981 following the receipt of information that a merger of funeral homes in Hamilton contravened the merger provision of the Act.

During the inquiry the records of nine funeral companies were examined and oral examinations were conducted in Hamilton in November 1983.

On January 24, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. On January 10, 1986, an Information containing one count under section 33 was laid at Hamilton against Hamilton Funeral Homes Limited, Funeral Financial Services Limited and Arbor Capital Resources Inc. Also named in the Information as being parties or privy to the offence, but not charged, were Wesley George Kee and Edward Wayne Powell.

The preliminary inquiry was scheduled to commence on September 8, 1986.

(9) *Gray Line Bus*

This inquiry commenced in March 1982 following receipt of a complaint from a small sight-seeing tour operator in Vancouver. The complainant alleged that Gray Line of Vancouver Inc., owned and operated by Pacific Northwest Bus Company Ltd., was engaged in activities in order to establish a monopoly in the sight-seeing tour market in readiness for Expo '86.

During the inquiry the records of Pacific Northwest Bus Company Ltd. were examined.

On February 13, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information under subsection 30(2) was laid at Ottawa on July 16, 1985, against Pacific Northwest Bus Company Ltd. On July 16, 1985, the Order of Prohibition under subsection 30(2) was granted. (The text of the Order is set out in Appendix IX).

(10) *Live Musical Entertainment*

An inquiry was initiated by the Director into the activities of a major professional association active in the musical entertainment field. During the course of the inquiry, searches were conducted of the offices of the association and a number of documents were seized pursuant to section 10 of the Combines Investigation Act.

The evidence assembled in this matter was subsequently referred to the Attorney General of Canada. Following a review of the evidence, the Attorney General concluded that a prosecution was not warranted.

(11) *Veterinary Services*

This inquiry commenced in March 1978 following receipt of complaints from two organizations involved in animal care alleging that a provincial veterinary association had effectively closed or forestalled the opening of certain animal care facilities. In March 1978, pursuant to section 10 of the Act, the records of the association and two of its executive officers were examined. In March and April 1979, oral examinations were held pursuant to section 17, to gather information from industry members. In April 1981, returns of information were sent, pursuant to section 9, to a number of animal care organizations seeking information respecting users of their facilities. The evidence obtained during the inquiry was referred to the Attorney General of Canada on September 21, 1982.

Later the same month, the Department of Justice indicated that, on the basis of the material submitted and a recent Supreme Court of Canada decision, prosecution was not warranted. Discussions between the Department of Justice and the Director ensued and subse-

quently information was provided to the Department of Justice concerning new attempts by the provincial veterinary association to restrict the activities of certain animal care organizations. After an extensive examination of the new situation by the Department of Justice and the Director, the Department of Justice in May 1985 indicated that, on the basis of the available information, prosecution was not warranted.

SECTION 34

(12) *Neptune Meters, Limited — Meters and Meter Parts*

This inquiry was initiated following receipt of a complaint from a meter sales and service firm alleging that Neptune Meters, Limited engaged in a pricing policy that discriminated against the firm. The evidence obtained in the inquiry was referred to the Attorney General of Canada on March 31, 1981. On December 23, 1981, an Information containing one count under paragraph 34(1)(a) of the Act was laid at Edmonton against Neptune Meters, Limited. In June 1982 the prosecution of this case was transferred to Toronto. The Information was relaid on October 5, 1982, and the preliminary inquiry commenced on May 24, 1983, in Toronto. On June 23, 1983, the accused was ordered to stand trial but subsequently filed a motion to quash the committal. The motion was heard on November 15, 1983, but on February 28, 1984, was dismissed. The accused appealed the dismissal of its motion, but on November 20, 1984, the appeal was denied. An application by the accused for leave to appeal to the Supreme Court of Canada was heard on February 18, 1985, but on March 1, 1985, the application was dismissed. Due to the involvement of defence counsel in the Estey Commission the trial, which had been scheduled to commence in January 1986, was rescheduled to May 5, 1986.

SECTION 38

(13) *Lois Canada Inc. — Clothing*

This inquiry into the sale and supply of jeans and related products was commenced by the Director in 1979. The evidence obtained in the inquiry pursuant to sections 10 and 17 of the Act was referred to the Attorney General of Canada on March 10, 1981.

On March 1, 1982, an Information containing two counts under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Montréal against Lois Canada Inc. At the preliminary inquiry on June 16, 1982, the accused was ordered to stand trial on all counts. The trial commenced on November 22, 1982, and continued to November 24, 1982, at which point there was no more available court time. The trial resumed on January 16, 1984, and counsel for the defence and the Crown filed final argument in April and July 1984, respectively. On May 17, 1985, the accused was convicted on one count under paragraph 38(1)(a) and both counts under paragraph 38(1)(b). On September 12, 1985, the accused was fined $12 500 on the count under paragraph 38(1)(a) and $12 500 and $5 000 on the two counts under paragraph 38(1)(b).

(14) *Wenger Ltd. — Watches*

This inquiry commenced in the spring of 1981 following receipt of a complaint from a retailer of watches and jewellery in Chicoutimi, Québec, alleging that Wenger Ltd. of Montréal had refused to supply a product to him because of his low pricing policy.

Searches were conducted in December of the same year in Montréal and Québec City pursuant to section 10 of the Act. Oral examinations under section 17 were conducted in November 1983.

The evidence obtained in the inquiry was referred to the Attorney General of Canada in November 1984. On February 27, 1985, an Information containing one count under paragraph 38(1)(b) of the Act was laid at Chicoutimi against Wenger Ltd. The preliminary inquiry was scheduled to commence on April 14, 1986.

(15) *Bulova Watch Company Limited — Watches*

This inquiry commenced in February 1981 following receipt of a complaint from a retailer of watches and jewellery that he had been refused supply of Bulova watches because of his low pricing policy. During the inquiry the records of the supplier were examined and oral examinations were held in Toronto.

On January 31, 1985, the evidence obtained in the inquiry was referred to the Attorney General of Canada. On June 17, 1985, an Information containing one count under paragraph 38(1)(b) was laid at Toronto against Bulova Watch Company Limited. On November 6, 1985, the accused waived the preliminary inquiry and pleaded guilty. A fine of $10 000 was imposed.

(16) *Epson (Canada) Limited — Computer Printers*

This inquiry commenced in February 1984 following complaints from a number of retailers that Epson (Canada) Limited, a major supplier of computer printers and related products, had adopted a policy which prevented the retailers from advertising Epson products at less than the suggested retail price. Searches under section 443 of the Criminal Code were conducted in April 1984.

On January 21, 1985, the evidence obtained in the inquiry was referred to the Attorney General of Canada. On March 13, 1986, an Information containing 23 counts under paragraph 38(1)(a) was laid at Toronto against Epson (Canada) Limited, its president, Maurice LaPalme, and its Vice-President, Sam Patterson.

At the end of the fiscal year, no date had been set for the preliminary inquiry.

(17) *Cosmetic and Perfume Products — Montréal*

This inquiry commenced in June 1978 following receipt of a complaint from a discount drugstore chain in Montréal alleging that it was being refused supply by a distributor of cosmetic and perfume products because of its low pricing policy. During the inquiry the records of the distributor were examined and oral examinations were held in Montréal and Ottawa.

The evidence obtained in the inquiry was referred to the Attorney General of Canada. Following a review of the evidence, the Attorney General concluded that a prosecution was not warranted.

(18) *Ski Equipment*

This inquiry commenced following receipt of a complaint from a ski retailer that a major supplier of ski equipment was refusing to supply the retailer because of the retailer's low pricing policy.

During the inquiry, documentary evidence was obtained from the premises of the supplier under section 10 and oral examinations were held pursuant to section 17. On September 23, 1985, the evidence obtained in this inquiry was referred to the Attorney General of Canada. Following a review of the evidence, the Attorney General concluded that a prosecution was not warranted.

3. Applications by the Director to the Restrictive Trade Practices Commission under Part IV.1

(1) *Broadcaster Communications*

This matter commenced as a result of an application received on July 9, 1985, under section 7 of the Act from six residents of Canada alleging that Broadcast News Limited, a subsidiary of Canadian Press, was engaged in certain practices reviewable under sections 31.2 and 31.4 of Part IV.1 of the Act, and further that Broadcast News operated its business to the

detriment of the public contrary to section 33. The fact of the application was made public by the applicants.

On October 25, 1985, the Director filed an application with the Restrictive Trade Practices Commission seeking an order prohibiting Broadcast News Limited from continuing the practice of tied selling as defined in section 31.4 of the Act with respect to wire, voice and cable news products and the transmission of those products to Canadian broadcasters. This application was subsequently withdrawn by the Director on March 21, 1986, following a public announcement by Broadcast News that the transmission of the voice news signal would not be tied to the voice news product itself following implementation of a new policy on June 1, 1986.

In a related matter, on February 26, 1986, the Restrictive Trade Practices Commission approved an application by Electronic News Group Inc. to appear as an intervenor at the Commission's hearings in this matter. This decision was challenged by Broadcast News Limited by way of an application to the Federal Court, but the proceeding was allowed to lapse as a result of the developments described above.

4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act

SECTION 33

(1) *National Hockey League*

This inquiry commenced following the rejection by the Board of Governors of the NHL of an application for the sale and transfer of the St. Louis Blues franchise to Saskatoon, Saskatchewan.

After a preliminary investigation, the Director concluded that the circumstances provided grounds for an inquiry under section 33 of the Act and, in June 1983, applied to the Restrictive Trade Practices Commission for orders pursuant to section 17 of the Act requiring the attendance of certain officers and governors of the NHL to give evidence.

The existence of the inquiry became public as a result of court challenges to the orders by the NHL. On August 9, 1983, the Federal Court of Canada dismissed a motion by the NHL to quash the orders, after the NHL had argued that section 17 of the Act was contrary to the Charter of Rights and Freedoms. An appeal of that decision was dismissed by the Federal Court of Appeal in November 1983 and, in March 1984, the Supreme Court of Canada denied an application for leave to appeal.

The orders issued under section 17 of the Act to certain governors and officials of the NHL required that they provide financial statements for each team's operations. On June 5, 1984, after hearing submissions from both parties, the Commission amended the orders so that individual financial statements were not required. The Director appealed that decision to the Federal Court of Appeal and on March 22, 1985, the court set aside the Commission's decision and upheld the original requirement to produce the financial statements.

A thorough examination of the evidence obtained over the course of the inquiry established that the decision of the National Hockey League to reject the Saskatoon proposal did not support an allegation of misconduct on the part of the NHL. The Director concluded that the circumstances did not warrant further inquiry and the matter was discontinued and reported to the Minister on November 28, 1985.

(2) *Waste Disposal Services*

This inquiry commenced in February 1983 following the announcement of a merger between the two major waste disposal companies within a particular metropolitan market.

Under the authority of section 443 of the Criminal Code, documentary evidence was obtained from the premises of the two companies involved. The evidence confirmed that the companies were the major competitors in this market. However, most customers in the market had long-term contracts which severely limited the ability of the merged entity to take advantage of its dominant position. An extensive survey of the market was undertaken; it was determined that, in the two years following the announcement of the merger, several new competitors had entered the market and were very successful in competing for and winning contracts from the merged entity.

The effect of the successful entry of these companies has been to reduce substantially the market share held by the dominant firm from a high point immediately following the merger. On the basis of the information before him the Director concluded that it could not be established that the merger had lessened competition to the detriment of the public, as the section requires. He therefore discontinued the inquiry and subsequently reported his decision to the Minister.

SECTIONS 33 AND 34

(3) *Newspapers — Edmonton, Alberta*

This matter was described in detail at page 55 of the 1983 Annual Report. Following the exercise of section 10 authority at the *Edmonton Journal* in April 1982 concerning an inquiry under section 33 and paragraph 34(1)(c) of the Act relating to the production, distribution and supply of newspapers in Edmonton, application was made for an injunction to prohibit further searching.

The matter was argued before the Alberta Court of Queen's Bench in April 1982, and subsequently before the Alberta Court of Appeal. In January 1983 the latter court ruled section 10 of the Combines Investigation Act to be contrary to the provisions of section 8 of the Charter. Leave to appeal to the Supreme Court of Canada was granted, and arguments were made on November 22 and 23, 1983.

On September 17, 1984, the Supreme Court of Canada upheld the ruling of the Alberta Court of Appeal, declaring that section 10 of the Act was inconsistent with section 8 of the Charter and therefore of no force or effect. (See Chapter II of the 1985 Annual Report for details of the decision.)

Following the decision of the Supreme Court of Canada, the Director sought information concerning the present state of competition in the Edmonton marketplace. It was determined that the *Edmonton Sun* was in fact able to increase circulation in the face of the activities of the Journal and that the evidence assembled would not support the conclusion that the activities of the Journal were intended to eliminate the Sun as a competitor. The Director concluded that, on the evidence before him, competition in the Edmonton market could be described as intense but not unreasonable. As a result he concluded that further inquiry in this matter was not warranted. The Director's decision was subsequently reported to the Minister.

SECTION 38

(4) *Motorcycle Windshields*

This inquiry commenced in April 1983 following receipt of a complaint from an aftermarket motorcycle parts dealer. The complainant alleged that he had been refused further supply of motorcycle windshield products because of his low pricing policy.

During the inquiry documentary evidence was obtained from the premises of the supplier pursuant to section 443 of the Criminal Code. The evidence did not substantiate the allegation but rather suggested that legitimate business reasons were the basis for the refusal to supply. As a result, the Director concluded that the matter did not warrant further inquiry. Accordingly, the matter was discontinued and reported to the Minister on August 23, 1985.

5. Director's Representations to Regulatory Boards

(1) *Office des professions du Québec*

During the course of the year the following seven professional corporations applied to the Office des professions to have their tariff of fees renewed and sanctioned by the provincial authorities: Le Barreau du Québec, La Chambre des Notaires du Québec, La Corporation professionnelle des évaluateurs agrées du Québec, l'Ordre des arpenteurs-géomètres du Québec, l'Ordre des médecins vétérinaires du Québec, l'Ordre des architectes du Québec and l'Ordre des ingénieurs du Québec. The Director was invited to submit his views in writing and to participate in hearings to be held in May 1986.

At the end of the fiscal year, the Director had prepared and submitted his written comments on the matter. The Director submitted that provincially sanctioned tariffs do not guarantee the maintenance of a high standard of quality but may increase prices above the competitive level. Such tariffs are therefore not in the public interest and should be abolished. The Director also noted that the existence of such tariffs causes distortions on the supply side of the market for professional services.

The Director was scheduled to appear at the hearings in May 1986 and to submit in writing further comments at the conclusion of the hearings.

6. Other Matters

(1) *Monitoring Order of Prohibition — Outdoor Advertising*

The Prohibition Order issued by the Supreme Court of Ontario on February 11, 1985, in the Outdoor Advertising case is described at page 20 of the 1985 Annual Report. In compliance with the Order, the respondent companies sent a copy of the Combines Investigation Act and the Order to each of their directors and officers, to their managers engaged in the outdoor poster business, to the Board of Directors of the Outdoor Advertising Association of Canada and to all current members of the Association. Each respondent company acting as a sales representative for regional and national sales for outdoor poster panel space terminated the exclusive sales agreement with other sales representatives and the individual outdoor poster plant operators. The Director is monitoring the activities of the industry in relation to the Order of Prohibition.

(2) *Thomson Newspapers*

During an ongoing inquiry the Director made application to a member of the Restrictive Trade Practices Commission in July 1983, under subsection 10(3) of the Act, to authorize his representatives to conduct an examination of the records located on various premises of Thomson Newspapers Limited. While this authority was being executed, the company obtained an order from the Federal Court — Trial Division, prohibiting the Director and his representatives from continuing their searches, on the grounds that section 10 of the Act was contrary to section 8 of the Charter of Rights and Freedoms.

The Crown had been granted leave to appeal the decision by the Federal Court, but following the Supreme Court of Canada's decision in the *Southam* case, the appeal was abandoned.

Oral examinations were scheduled to commence on September 23, 1985; however, Thomson Newspaper challenged the section 17 order on the grounds that the section was contrary to the Charter.

Argument on this issue was heard before Justice Holland of the Supreme Court of Ontario in January 1986. On March 13, 1986, he rendered a decision in which he declared that subsections 17(1), 17(2), and 17(8) of the Act, in respect of the examination of witnesses

under oath before a member of the Commission, do not limit the rights guaranteed by section 7 of the Charter. However, Mr. Justice Holland also found that subsections 17(1) and 17(4) of the Act relating to the production of documents amounted to a seizure and, following the reasoning adopted by the Supreme Court of Canada in the *Southam* decision, held that those provisions were inconsistent with the provisions of section 8 of the Charter.

Both parties have applied for leave to appeal.

(3) *Buying Groups*

In June 1982 the Director received an application under section 7 of the Act concerning the establishment of a buying group by two major food retailers. The concerns of the applicants were extensively reported in the press. At the end of the fiscal year this inquiry was continuing.

(4) *Wholesale Travel Agencies — Western Canada*

This inquiry commenced in August 1984 following the joint announcement that three major Western Canadian inclusive tour operators — CP Air Holidays, Pacific Western Holidays Ltd. and Silver Wing Holidays Ltd. — had agreed to establish a uniform schedule of commission rates to be paid to retail travel agents for the sale of their products from western Canada to continental United States destinations.

An order pursuant to subsection 17(1) of the Act was issued by a member of the Restrictive Trade Practices Commission requiring representatives from seven tour companies to appear in February 1985 for oral examination. Shortly before the hearings were scheduled to commence, a request was made on behalf of CP Air Holidays to adjourn the hearings *sine die* pending the outcome of CP Air Holidays' application to the Supreme Court of British Columbia for a declaration that the oral examination procedure established in subsection 17(1) of the Act infringes section 7 of the Charter.

The application was heard in June 1985 and a decision was rendered in November 1985, upholding the Director's rights under section 17. CP Air Holidays filed a notice of appeal. At the end of the fiscal year, no date had been set to hear the appeal.

(5) *Broadcaster Communications*

This matter commenced as a result of an application received on July 9, 1985, under section 7 of the Act from six residents of Canada alleging that Broadcast News Limited, a subsidiary of Canadian Press, was engaged in certain practices reviewable under sections 31.2 and 31.4 of Part IV.1 of the Act, and further that Broadcast News operated its business to the detriment of the public contrary to section 33. The fact of the application was made public by the applicants.

An application was made to the Restrictive Trade Practices Commission in respect of part of the inquiry (see item 3(1)).

The inquiry was proceeding at the end of the fiscal year.

(6) *Rock Concert Promotions*

Based on information provided by sources outside the Bureau, the public was made aware that on June 10, 1985, the Director had received an application under section 7 of the Act which alleged that Maple Leaf Gardens Limited had a policy of refusing access to its facilities to rock concert promoters with the exception of Concert Productions International. The application further alleged that Concert Productions International's exclusive access was the result of an agreement between Concert Productions International and Maple Leaf Gardens Limited which had the effect of lessening competition, unduly, contrary to section 32 of the Act.

The inquiry was continuing at the end of the fiscal year.

(7) *Motion Picture Exhibition — Nova Scotia and New Brunswick*

This matter became public as a result of a disputed application for the retention of seized documents and a cross application by Famous Players Limited under the Charter for the return of certain disputed documents. An appeal by Famous Players Limited of the order permitting the Director to retain all the documents was scheduled to be heard on May 13, 1986.

(8) *Liability Insurance*

The public was made aware of this inquiry on January 16, 1986, when ten members of Parliament submitted to the Director an application under section 7 of the Act for an inquiry into the substantial increases in premiums for liability insurance for Canadian businesses, municipalities, and individuals. The applicants alleged that the substantial increases resulted from an agreement among insurers in contravention of section 32 of the Act.

At the end of the fiscal year, the Director was continuing his inquiry into this matter.

(9) *Motion Picture Exhibition — Quebec*

On January 17, 1986, Compagnie France Film made an application to the Restrictive Trade Practices Commission requesting that it compel the Director to commence a research inquiry under section 47 of the Act into the distribution and exhibition of French version motion pictures in the province of Québec. Compagnie France Film subsequently wrote to the Commission indicating that the Director was examining the matter on his own initiative and requested that the application be held in abeyance. The Commission subsequently decided not to compel the Director to commence an inquiry.

At the end of the fiscal year, the Director's examination of the matter was continuing.

(10) *OECD Report on Competition Policy and the Professions*

In May 1985 the OECD published the report *Competition Policy and the Professions*. At the time, the Director was chairman of the OECD's Working Committee on Restrictive Business Practices and was responsible for Canada's input to this report.

The report examined the relationship between competition policy and the organization and practices of the self-regulated professions, with emphasis on the professions of law, medicine and architecture. It concluded by calling for a re-evaluation of the justification for certain restrictive practices employed by these professions. While the report took into account the importance of maintaining the quality and integrity of the professions, it also noted that in those cases where such practices had been abolished or modified, quality of service had not been threatened.

Following its publication and in accordance with OECD wishes, the Bureau circulated the report to those professions in Canada which were the subject of its focus.

(11) *Merger Register*

This register has been maintained by the Director since 1960. It attempts to record all reported mergers in industries subject to the Combines Investigation Act.

Accordingly, until the 1976 amendments, firms in most of the service sectors of the economy were largely excluded. Information available under the Corporation and Labour Unions Returns Act (Calura) indicates that a large number of very small acquisitions are not reported in the press. Calura information itself is not used in the preparation of the register because many companies report late, many acquisitions of extremely small companies are reported without any indication as to size, many acquisitions are of nonoperating companies, and it is often impossible to tell whether there has been a real change in control.

The merger register depends upon comprehensive coverage of the major financial news media, including daily and financial newspapers, trade journals, business magazines and other publications of Canada, the United States and Britain. To the extent that the intensity of press reports of merger activity does not vary significantly from year to year, to the extent that it is

accurately reported and to the extent that the canvass of press reports by the Bureau is consistent from year to year, the number of acquisitions recorded in the merger register provides an indication of merger trends.

Since the Foreign Investment Review Act came into force in April 1974, the information respecting "foreign" acquisitions in the merger register now includes acquisitions allowed under the Foreign Investment Review Act, which was repealed on June 30, 1985, and the Investment Canada Act, which came into force on the same date. Information respecting reviewable investments in Canadian business enterprises by foreign persons is brought to the attention of the Director for the purpose of obtaining advice with respect to the competition policy implications of such matters. However, the information provided to the Director by the Foreign Investment Review Agency and Investment Canada would not of itself be used to initiate an inquiry or in any subsequent proceedings under the Combines Investigation Act.

Although the register does reflect a fairly comprehensive coverage of published sources of information, attempts to verify its accuracy have shown that there is a need for more adequate continuing sources of information about mergers. At this time, therefore, the merger register should not be regarded as more than an initial review of public information.

The following table shows the total number of acquisitions recorded yearly since 1960.

Year	Foreign*	Domestic**	Total
1960	93	110	203
1961	86	152	238
1962	79	106	185
1963	41	88	129
1964	80	124	204
1965	78	157	235
1966	80	123	203
1967	85	143	228
1968	163	239	402
1969	168	336	504
1970	162	265	427
1971	143	245	388
1972	127	302	429
1973	100	252	352
1974	78	218	296
1975	109	155	264
1976	124	189	313
1977	192	203	395
1978	271	178	449
1979	307	204	511
1980	234	180	414
1981	200	291	491
1982	371	205	576
1983	395	233	628
1984	410	231	641
1985***	466	246	712

* Acquisitions involving a foreign-owned or foreign-controlled acquiring company (the nationality of the controlling interest in the acquired company prior to the merger could have been foreign or Canadian)

** Acquisitions involving an acquiring company not known to be foreign-owned or foreign-controlled (the nationality of the controlling interest in the acquired company prior to the merger could have been foreign or Canadian)

*** Preliminary

CHAPTER VI

REGULATED SECTOR BRANCH

1. Activities

The Regulated Sector Branch is primarily concerned with the behaviour and performance of regulated industries in the telecommunications, broadcasting and transport areas. It also prepares studies on such matters as the effects of tariffs and quotas on competition in Canada.

While the Regulated Sector Branch is relatively new, the Director of Investigation and Research has had the authority to intervene before federal regulatory boards since the 1976 amendments to the Combines Investigation Act. The Director has, from time to time, also intervened before provincial regulatory boards with the permission of such boards or at their invitation. In addition to interventions under section 27.1 of the Act, the Branch enforces sections of the Act which may be applicable to the unregulated activities of regulated industries.

SECTION 27.1 READS AS FOLLOWS:

> 27.1(1) The Director, at the request of any federal board, commission or other tribunal or upon his own initiative, may, and upon direction from the Minister shall, make representations to and call evidence before any such board, commission or other tribunal in respect of the maintenance of competition, whenever such representations or evidence are or is relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining such matter.
>
> (2) For the purposes of this section, "federal board, commission or other tribunal" means any board, commission, tribunal or person who is expressly charged by or pursuant to an enactment of Parliament with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product and includes an ad hoc commission of inquiry charged with any such responsibility but does not include a court.

Since 1976, the Director of Investigation and Research has made representations before a number of regulatory bodies, among them, the Canadian Radio-television and Telecommunications Commission, the Canadian Transport Commission, the Board of Commissioners of Public Utilities for the Province of Nova Scotia, the Board of Commissioners of Public Utilities of the Province of New Brunswick, the Public Utilities Board of Alberta and the Ontario Securities Commission.

These interventions have dealt with a broad range of issues including systems and terminal interconnection in the telecommunications industry, entry in the transport industries, the effect on competition of acquisitions and joint ventures in telecommunications and transport and the introduction of more competition in both broadcasting and the securities industry.

The Director liaises with other groups during the preparation of an intervention to ensure that his representations are complementary and not redundant.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act

SECTION 32

(1) *"For-hire" Trucking — Western Canada*

The evidence gathered in this inquiry was referred to the Attorney General of Canada, and on November 5, 1979, an Information was laid under section 32 of the Act against 20

trucking companies and 11 individuals for allegedly conspiring to lessen competition in the western trucking market for less-than-truckload services.

As noted in the Director's 1985 Annual Report at pages 56-57, the case was proceeding to preliminary inquiry when, on March 27, 1984, counsel for the defence raised objections to the case proceeding on grounds of loss of jurisdiction by the Provincial Court and an undue delay in contravention of the Charter. Both motions have been heard by the Provincial Court of Alberta, and appealed therefrom to the Court of Queen's Bench and further appealed to the Court of Appeal of Alberta. On June 13, 1985, the Court of Appeal ruled there was no loss of jurisdiction over the proceeding nor was there an undue delay or abuse of process. The Court ordered that the case be remitted back to the Provincial Court to set the date for the preliminary inquiry, which was subsequently scheduled for March 10, 1986.

On October 28, 1985, Canadian National Transportation Limited (CN) and Canadian Pacific Express & Transport Ltd. (CP), respectively, applied for leave to appeal to the Supreme Court of Canada from the Alberta Court of Appeal's decision. CN's appeal was based on section 7 and paragraph 11(b) of the Charter, or in the alternative, abuse of process by reason of delay. In its application CP alleged that the Provincial Court of Alberta had lost jurisdiction over the proceeding. The Supreme Court of Canada denied CP's application but reserved its decision on CN's application.

On February 18, 1986, CN applied to the Provincial Court of Alberta for an adjournment of the preliminary inquiry pending the Supreme Court of Canada's decision on the application for leave to appeal. The Provincial Court rescheduled the preliminary inquiry to September 22, 1986.

3. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act

SECTION 31.4

(1) *Floppy Disks*

This inquiry commenced in February 1979 following receipt of a complaint from a manufacturer and distributor of various information storage media for use in word processing, computer and recording equipment to the effect that two leading suppliers of word processing systems were engaging in a policy of tied selling.

Word processors of the kind distributed by these suppliers use "floppy disks" as their storage medium. These disks are somewhat like small, flexible phonograph records in appearance and information is stored on them magnetically by the read/write heads of the word processor. In order for the read/write heads to properly orientate themselves on the surface of the floppy disk to lay down or retrieve information in an orderly fashion, the disk must first be addressed or "formatted". This is accomplished through the use of a coded command to the word processor.

These format codes were being held secret by the two suppliers concerned. Consequently, only those disks pre-formatted and supplied by them would function in the word processors. The products of other suppliers were thereby excluded from this market.

Evidence was gathered by way of searches and extensive interviews with participants in the industry. An analysis of this information failed to provide sufficient grounds for the making of an application to the Restrictive Trade Practices Commission under subsection 31.4(2) of the Act for an order prohibiting the continuation of this policy. One of the essential statutory elements necessary to establish the existence of the reviewable practice of tied selling under subsection 31.4(2) is that the practice must be demonstrated to have an exclusionary effect in the market with the result that competition is or is likely to be lessened substantially. This element could not be satisfied in this inquiry as it was discovered that the format codes

involved had become, by various means, known through a substantial portion of the industry. Consequently, floppy disks compatible with the word processing equipment of the suppliers involved became available from a number of alternative sources.

On the basis of the foregoing, the Director concluded that the matter did not warrant further inquiry. The matter was therefore discontinued and reported to the Minister on May 7, 1985.

4. Director's Representations to Regulatory Boards

Telecommunications

(1) *Bell Canada, Connection of Customer-provided Terminal Devices*

On November 13, 1979, Bell Canada applied to the Canadian Radio-television and Telecommunications Commission (CRTC) for an order approving an amendment to rule 9 of the General Regulations of Bell Canada. This rule is one of the conditions that govern the connection of telecommunication equipment to the Bell Canada network. The details of this application, as well as Bell's proposals for interim requirements governing the attachment of customer-owned equipment, and the interim and final decisions appear in the 1982 and 1983 Annual Reports at pages 64 and 61, respectively. Further details are contained in the 1984 Annual Report at page 74.

In Telecom Decision CRTC 82-14 of November 23, 1982, the CRTC ruled that it would not be appropriate to deregulate the terminal equipment business of carriers conducted on an in-house basis. Accordingly, the CRTC imposed a number of requirements on the carriers pertaining to the pricing of new and in-place terminal equipment. On December 20, 1982, CNCP Telecommunications filed Notice of Application for Leave to Appeal to the Federal Court of Appeal on the basis that the CRTC erred in holding that it had authority to regulate the prices at which CNCP sells such equipment. As an intervenor in the terminal attachment proceedings leading to Telecom Decision CRTC 82-14, the Director was a respondent in this court action. In a legal factum filed in February 1985, the Director argued that the CRTC did properly exercise its jurisdiction and that Telecom Decision CRTC 82-14 should be upheld.

The Federal Court of Appeal heard this matter on June 4, 1985, and in a judgment handed down on June 12, 1985, denied the appeal by CNCP. CNCP filed notice of application for leave to appeal with the Supreme Court of Canada on July 22, 1985. The application was heard on October 1, 1985 and on October 10, 1985, the Supreme Court of Canada dismissed the application.

(2) *New Brunswick Telephone Company Limited Application for Network Extension Telephone Service*

On December 22, 1978, the New Brunswick Telephone Company, Limited (N.B. Tel) made an application to the Board of Commissioners of Public Utilities of the Province of New Brunswick for approval of proposed rates and charges for a new service to be offered by the applicant, known as Network Extension Telephone Service, i.e., radio paging service. The details of the hearings in this matter are set out at pages 64 and 65 of the 1983 Annual Report.

As reported at that time, Capital Communications and Multi-Services Ltd. of Fredericton, New Brunswick, submitted a complaint to the Board of Commissioners of Public Utilities of the Province of New Brunswick. The complaint requested that the Board set tariffs for telephone answering, radio paging, and mobile radio services interconnected to the network of N.B. Tel. Such tariffs would comprise rates for access to the telephone network and the provision of designated telephone numbers, known as outpulsing service.

Subsequently, the Board convened a general issue hearing to consider the potential impact of systems and terminal interconnection on telephone service in the province. Capital

Communications and Multi-Services Ltd. once again raised the issue of outpulsing service and rates in the context of this hearing. The Director is also an intervenor in the general issue proceeding, as reported in item (9).

As of March 31, 1986, the Board had not yet rendered a decision either on the complaint or on the general issue proceeding.

(3) *CRTC Telecom Cost Inquiry — Phase III — Costing of Existing Services*

On December 15, 1981, the CRTC issued Telecom Public Notice 1981-41 announcing its intention to hold a public hearing as part of the third phase of the Telecommunications Cost Inquiry.

The Cost Inquiry was initiated by the Canadian Transport Commission in January 1972 and continued by the CRTC in April 1976, when it assumed jurisdiction over federally regulated telecommunications carriers. The proceedings are described in detail at pages 72 and 73 of the 1983 Annual Report. In that report, it was indicated that the Director had filed written formal and reply arguments on this subject with the CRTC and was awaiting the decision of the Inquiry Officer who chaired the public hearings on the matter.

On April 30, 1984, the Inquiry Officer released his report. The principal recommendations of the report were consistent with the positions taken by the Director in his Final Argument of November 22, 1982. The Inquiry Officer concluded that the costing methodology to be developed for existing services should use only a few broad service categories and, to the fullest extent possible, rely upon the carrier's actual costs as recorded in its accounts. The report emphasized auditability as the principal criterion for evaluating possible costing methodologies and rejected the computer-simulation-based methodologies proposed by some carriers on the ground that they were, for all practical purposes, not possible to audit.

The Director and other parties submitted written comments on the Inquiry Officer's report on June 14, 1984. The Director's comments emphasized that the CRTC should in some instances go beyond the principal recommendations of the report to specify, in its decision, criteria for cost assignment that further reduce carrier discretion to design costing systems that conform to their corporate objectives. These comments also emphasized the Director's long-standing position that costing systems can, at best, provide only reasonable approximations of the costs of broad service categories, and are insufficient alone to prevent the cross-subsidization of competitive services by monopoly service revenues. Complementary regulatory policies, including eliminating carrier prohibitions on resale and sharing and requiring certain activities to be carried on through an organization that is fully separate from the regulated utility, are therefore endorsed.

The Director submitted his reply to the comments of Bell Canada and B.C. Tel on July 6, 1984. Final oral argument was presented in September 1984.

The CRTC rendered its decision in this matter on June 25, 1985. Consistent with the submissions of the Director, the CRTC rejected using the five-way split methodology proposed by Bell Canada and B.C. Tel. Instead, the CRTC elected to rely on a system similar to one currently used by the Telecom Canada companies to divide long-distance revenues among themselves.

Once the new methodology is in place and operational it will aid the CRTC in detecting the undesirable cross-subsidization of one telephone service by another and in setting just and reasonable telephone rates.

(4) *Newfoundland Telephone Company Limited — Mobile Radio and Paging Services*

On April 27, 1982, Newfoundland Telephone Company Limited (Nfld Tel) filed an application with the Newfoundland and Labrador Board of Commissioners of Public Utilities for approval of a new service to be called Dial Access to Radio Paging Service. The hearing convened on June 3, 1982, at which time Nfld Tel objected to the intervention of the Director on the grounds that the Director did not have the statutory power to appear and that his

appearance was not relevant to the hearing. The Board subsequently dismissed the objection and in a written order dated June 11, 1982, permitted the Director to appear and be heard on the application.

Further details in this matter and additional background information are set out at pages 74 and 75 of the 1983 Annual Report. As reported at that time, Nfld Tel had petitioned the Supreme Court of Newfoundland, Court of Appeal, for leave to appeal the decision of the Board to grant the Director standing to appear before it in relation to this matter. The appeal was heard on December 5, 1983. Nfld Tel argued that the Board's decision to grant the Director standing was an error in law given the absence of a specific authority granted to the Director by the Combines Investigation Act to appear before provincial regulatory boards. Subsection 27.1(1) of the Act specifically authorizes the Director to appear before federal regulatory boards.

On April 18, 1984, the Newfoundland Court of Appeal allowed an appeal by Nfld Tel from a decision of the Board of Commissioners of Public Utilities that permitted the Director to intervene in a matter before the Board. On June 26, 1984, the Director made an application for leave to appeal this judgment to the Supreme Court of Canada.

On October 1, 1984, the Supreme Court of Canada granted leave to appeal from the decision of the Newfoundland Court of Appeal regarding the Director's capacity to appear before provincial tribunals. The Court commenced proceedings by stating that it was predisposed to grant such leave since there were two conflicting decisions, the New Brunswick Court of Appeal having ruled in the Director's favour in relation to capacity (see item (7)) and the Newfoundland Court of Appeal having found against the Director.

The Director's factum as appellant in the Newfoundland matter was filed on October 17, 1985. The Director's factum as respondent in the New Brunswick matter was filed on March 17, 1986. It is anticipated that both these matters will be heard jointly by the Supreme Court of Canada in the spring of 1986.

(5) *Bell Canada Corporate Reorganization*

On June 23, 1982, Bell Canada announced a plan to reorganize the Bell Canada group of companies. An essential element of the reorganization would be a court-authorized "arrangement" as provided for by the Canada Business Corporations Act, whereby all of Bell Canada's outstanding share capital would be transformed into share capital of Bell Canada Enterprises Inc. (BCE), a former subsidiary of Bell Canada. Through an exchange of shares, all of Bell Canada's equity investments, except those in Tele-Direct (Publications) Inc., Bell-Northern Research, and Telesat Canada, would then be transferred to BCE. These transferred investments consist primarily of Bell Canada's controlling interest in Northern Telecom, a number of provincial telephone companies, Bell Canada International Management Research and Consulting Ltd. (BCI), Bell Communications Systems Inc. (BCS, a supplier of customer premises telecommunications equipment), and a number of printing and publishing companies. Thus, BCE would become the new holding company for the Bell group, and Bell Canada would become a wholly-owned subsidiary of BCE. BCE would also become the focus for strategic planning within the Bell group.

Further details in this matter are referred to at pages 78 to 80 of the 1983 Annual Report and at pages 60 to 61 of the 1985 Annual Report. In the last instance it was reported that two new Bills, C-19 and C-20, were given First Reading on December 20, 1984.

Bill C-19 is an Act respecting the reorganization of Bell Canada. This Bill implements the major recommendations of the CRTC's report on Bell Canada's 1983 corporate reorganization. The legislation contains an important provision, strongly favoured by the Director, that will allow the CRTC to require Bell Canada to engage in competitive telecommunications activities by way of separate affiliates, where such a business organization would be an effective means of achieving the CRTC's regulatory objectives. This would reduce the opportunity for Bell Canada to subsidize competitive telecommunications activities with revenues from its monopoly operations. Bill C-20 is an Act to amend the Canadian Radio-television and Tele-

communications Commission Act, the Broadcasting Act and the Radio Act. This Bill would allow the Cabinet to issue binding policy directives to the CRTC in telecommunications matters. It would also allow the government to remove CRTC regulation from specified competitive telecommunications services for which the need for regulation is not apparent.

Representatives of the Director participated along with representatives of the CRTC and of the Departments of Communications and Justice in the preparation of Bill C-19.

Bill C-20 received Second Reading on February 14, 1985, and was reported by the House Standing Committee on Communications and Culture on November 22, 1985. Bill C-19 received Second Reading on April 15, 1985, and was reported by the same Committee on March 26, 1986.

(6) *Radio Common Carrier Interconnection with Federally Regulated Telephone Companies*

In Telecom Decision CRTC 84-10, dated March 22, 1984, the CRTC concluded that the interconnection of cellular and conventional public and private mobile radio systems to the public switched telephone network was in the public interest. The details of this decision and background information appear in the 1984 Annual Report at pages 79 and 80. Further details are contained in the 1985 Annual Report at pages 61 and 62.

As a result of Telecom Decision CRTC 84-10, Bell Canada and B.C. Tel were directed to develop separate tariffs for Cellular and Radio Common Carrier (RCC) Interconnection.

As previously reported, the CRTC approved, on an interim basis, the tariff revisions filed by Bell Canada providing for the introduction of Cellular Access Service. Following responses to interrogatories, the CRTC requested public comment. The CRTC had also directed Bell Canada to enter into negotiations with Bell Cellular and Cantel to develop cost-based rates for an entire dedicated NXX code (the first three digits of a telephone number). Bell Canada filed these tariffs on April 1, 1985, and the CRTC called for public comments on the proposed tariffs. Similar tariff revisions were filed by B.C. Tel.

On August 15, 1985, the CRTC granted final approval of Bell Canada rates for Cellular Access Service and on August 21, 1986, granted final approval of tariff revisions providing for the introduction of Switched Network Access for Conventional Radio System Operations (RCC interconnection). On August 15, 1985, the CRTC also granted final approval of tariff revisions providing for the introduction of rates and charges for an entire dedicated NXX code. With respect to B.C. Tel, the CRTC on August 15, 1985, granted interim approval of tariff revision providing for the introduction of Switched Network Access for Cellular Interconnection.

(7) *New Brunswick Telephone Company Limited Application for an Interpretation of Certain Provisions of its General Tariff*

On November 3, 1982, the New Brunswick Telephone Company, Limited (N.B. Tel) made an application to the Board of Commissioners of Public Utilities of the Province of New Brunswick for an interpretation of Items 1230.2 and 1600.3 of its General Tariff respecting Network Extension Telephone Service (i.e., radio paging) and Call Completion Service (i.e., telephone answering service). Specifically, N.B. Tel requested Board approval of an interpretation that would permit the company to eliminate hook-up charges for those customers transferring to Network Extension Telephone Service or Call Completion Service from the services offered by radio common carriers whose assets the company had acquired. This matter was described in detail at page 81 of the 1983 Annual Report.

At that time the Director was considering the advisability of an appeal against the ruling of the Board that the Director did not have capacity as a person to intervene before it, a decision based upon the ruling of Justice Pace of the Supreme Court of Nova Scotia, Appeal Division, discussed at pages 63 and 64 of the 1983 Annual Report.

On June 1, 1983, the Director made an application to the New Brunswick Court of Queen's Bench for a judicial review of the ruling of the Board. The matter was heard before Justice Hoyt of the Court's Trial Division on August 24, 1983.

On November 16, 1983, Justice Hoyt rendered a judgment dismissing the application of the Director. In his reasons, Justice Hoyt expressed doubt that subsection 27.1(1) of the Combines Investigation Act, which specifically authorizes the Director to appear before federal regulatory boards, precluded the Director from intervening before other regulatory boards. However, his doubts on this issue were not sufficient to cause him to disagree with the 1981 judgment of Justice Pace.

Justice Hoyt's decision was subsequently appealed by the Director to the New Brunswick Court of Appeal on December 12, 1983. The appeal was heard on March 15, 1984. On April 6, 1984, the Court of Appeal of New Brunswick in allowing the appeal concluded that the Board and the Trial Judge in the Court of Queen's Bench were in error in concluding that the Director did not have the power or capacity to appear or be represented before the Board.

On June 18, 1984, N.B. Tel also filed application for leave to appeal from the April 6, 1984, judgment. On October 1, 1984, the Supreme Court of Canada granted leave to appeal from the decision of the Court of Appeal of New Brunswick regarding the Director's capacity to appear before provincial tribunals. The Court commenced proceedings by stating that it was predisposed to grant such leave since there were two conflicting decisions, the New Brunswick Court having ruled in the Director's favour and the Newfoundland Court having found against the Director (see item (4)).

In a separate proceeding, N.B. Tel made an application for Statement of Claim filed in the Federal Court of Appeal concerning a subsequent decision of the Board to allow the Director to appear in a general issue hearing on systems and terminal interconnection (see item (9)). A stay of proceedings has been agreed to by both parties pending a decision from the Supreme Court of Canada. The Director's factum as appellant in the Newfoundland matter was filed on October 17, 1985. The Director's factum as respondent in the New Brunswick matter was filed on March 17, 1986. It is anticipated that both these matters will be heard jointly by the Supreme Court of Canada in the spring of 1986.

(8) *Services Using the Vertical Blanking Interval or Sudsidiary Communication Multiplex Operation*

In reponse to CRTC Public Notice 1983-77, the Director submitted comments to the CRTC on July 29, 1983, respecting the appropriate regulatory treatment of services to be offered in the future on a commercial basis by broadcasting undertakings using the vertical blanking interval (VBI) and Subsidiary Communications Multiplex Operation (SCMO).

As reported at page 63 of the 1985 Annual Report, the CRTC took a two-phased approach to regulating the use of VBI and SCMO facilities. The first phase, in keeping with the Director's recommendations, involved the CRTC's announcement that it would not require broadcasters to obtain a licence for the use of the VBI and SCMO and that no limitations would be imposed on broadcasters with respect to the type of services they may offer. Furthermore, cable companies were ordered to carry VBI and SCMO services unless technical considerations dictated otherwise.

The second phase of the CRTC's plan will simply involve reviewing the experience with the Phase I decision to determine whether there is any need for modifications to the plan. To this end, the CRTC has instructed licencees authorized to provide VBI and SCMO services to file reports on their experience and progress by December 31, 1986. A date for Phase II has yet to be announced.

(9) *Interconnection in the Telecommunications Industry in New Brunswick*

On September 12, 1983, the Board of Commissioners of Public Utilities of the Province of New Brunswick issued a notice announcing that a public hearing would be held to consider issues relating to interconnection in the telecommunications industry in New Brunswick. The Director filed a Notice of Intention to participate with the Board on October 24, 1983.

The Director also filed a written submission with the Board on March 5, 1984, along with the evidence of two expert witnesses, W.H. Melody of Simon Fraser University and Charles

M. Dalfen of Ottawa. These experts appeared on the Director's behalf during public hearings held in May and August 1984.

Further details in this matter and additional background information are set out at pages 64 and 65 of the 1985 Annual Report. In brief, the Director's submissions argue that competition in the provision of telecommunication products and services will provide users with an enhanced choice of equipment and services, lower prices and increased efficiency and flexibility. They also address the various regulatory tools available to the regulator to prevent cross-subsidization of competitive services by monopoly services, as well as complementary mechanisms that could be implemented to speed up the development of fair competition in the market. The Director submitted that reliance on accounting methodologies and reporting procedures cannot provide adequate protection against cross-subsidization and would greatly increase the regulatory burden. In the Director's view, the Board should require that all of N.B. Tel's competitive services be offered through a separate subsidiary in order to minimize the potential for cross-subsidization and the Board's regulatory involvement in monitoring N.B. Tel's competitive activities.

As of March 31, 1986, a decision or report of the Board was still pending.

(10) *Attachment of Customer-owned Terminal Equipment to the Public Switched Network in Nova Scotia*

This matter was referred to in detail at pages 65 and 66 of the 1985 Annual Report.

On December 23, 1985, the Nova Scotia Board of Commissioners of Public Utilities issued their decision, which denied authority to Maritime Telegraph & Telephone Company, Limited (Maritime Tel) to sell and lease in-place terminal equipment before the establishment by the company of a separate terminal equipment division. In making this decision, the Board agreed with the Director and concluded that the pricing approach proposed by Maritime Tel would not maximize the contribution to be obtained from the sale and lease of multiline terminal equipment. The Board also agreed with the Director's concerns regarding the implications of divestiture by Maritime Tel of its terminal assets before the real value of those assets has been established.

In its decision, the Board also addressed the issue of Maritime Tel's treatment of inside wiring. Noting that Maritime Tel's previous proposals for the sale of inside wiring had never been formalized, the Board directed Maritime Tel to file a formal application in this regard.

The Board, in conjunction with Maritime Tel, is currently engaged in a study of the accounting provisions required for the establishment of a separate terminal equipment division. When this work is complete, the Board will decide on the proper process for the implementation of the necessary regulations.

(11) *Enhanced Services*

This matter arose from an application to the CRTC by Bell Canada in December 1980 for approval of a voice message service. The service permits subscribers to place a message in Bell's voice transmission network and have it delivered at a specified time or, in the event of no answer, to have it repeated until delivered. This matter was referred to in detail at pages 66 and 67 of the Director's 1985 Annual Report.

On August 13, 1985, the CRTC released Telecom Decision CRTC 85-17, which identified those carrier services to be considered enhanced pursuant to the definition provided in Telecom Decision CRTC 84-17. Service offerings singled out for specific review were Datapac Access Arrangements and speed conversion. The carriers argued that both these services should be considered as a basic service offering. In the case of Datapac Access Arrangements, the CRTC concluded that it should be classified as enhanced since any application was not limited to the offering of transmission capacity for the movement of information. In regard to speed conversion, the CRTC agreed with the carriers that this particular application did not modify the content, code or protocol of a subscriber's information. Hence speed conversion is not an enhanced service feature.

As previously reported, the CRTC in Telecom Public Notice 1985-8 dated January 25, 1985, had requested public comment on the submissions of all federally regulated common carriers concerning a proposal to replace individual rate evaluation studies with an aggregate study for all enhanced services, to be filed on an annual basis. As of March 31, 1986, a decision from the CRTC on this matter was pending.

(12) *Interexchange Competition and Related Issues*

This matter was initiated upon an application by CNCP Telecommunications to the CRTC for permission to interconnect with the telephone networks of Bell Canada and B.C. Tel for the purpose of competing with those companies in the provision of long distance (interexchange) public telephone service. Also at issue in the resulting CRTC proceeding was whether to facilitate increased telecommunications competition by eliminating the prevailing carrier tariff restrictions on resale and sharing. Further details on this matter are set out at pages 68 and 69 of the Director's 1985 Annual Report.

On August 29, 1985, the CRTC released Telecom Decision CRTC 85-19, which denied CNCP's application to compete with Bell Canada and B.C. Tel in the provision of long distance telephone service.

In its Decision, the CRTC agreed with the Director and other intervenors that there was convincing evidence that a number of benefits could potentially result from competition in the long distance market. However, on the merits of CNCP's application alone, the CRTC concluded that CNCP, in agreeing to make a contribution to keep local rates from rising, would be left with the financial capacity to offer only limited price discounts over a limited number of routes. In this respect, the number of benefits from competition would be significantly reduced. The CRTC also concluded that if a lower contribution level were established, there would be a substantial risk of uneconomic entry by new firms into the long distance market, thereby increasing the overall costs of supplying telephone service to subscribers. In effect, CNCP would be subsidized by existing telephone subscribers in the form of higher local rates.

The CRTC also denied the proposals of Bell Canada and B.C. Tel to rebalance their rates by lowering long distance charges and increasing local charges. The impact on local rates would, in the CRTC's view, have serious implications for many telephone subscribers, in particular, on their ability to afford basic local telephone service. In its Decision, the CRTC stated that universality is of fundamental importance both to protect subscribers and to maintain the value of the telephone networks.

Citing concern that long distance rates are too high relative to costs, the CRTC in its Decision announced its intention to initiate a public process to consider the issue of long distance rates. This proceeding will consider the extent of long distance rate reductions required, the timing and implementation, and what methods should be employed to ensure the principle of universal access to telephone service at an affordable price. This will be, in effect, a hearing on rate rebalancing. In the interim, the CRTC has put a freeze on the aggregate level of Bell and B.C. Tel's long distance rates.

The CRTC's Decision did permit some additional competition in the provision of some telecommunications services. The CRTC approved:

(a) B.C. Rail's application to compete with B.C. Tel in the provision of certain private line and data services;

(b) the interconnection of private local systems and public non-voice local systems to the facilities of the federally-regulated telecommunications common carriers; and

(c) the resale and sharing of telecommunications services other than long distance public telephone service and primary local telephone service.

On March 7, 1986, the CRTC issued Telecom Public Notice 1986-26 requesting comments on an application submitted to the CRTC by CNCP for review of Telecom Decision CRTC 85-19. CNCP's principal argument in support of their review application is that the CRTC's Decision to freeze the total dollar contribution from MTS/WATS rates to local ser-

vice will result in a progressive decline in contribution per minute as the number of minutes of long distance traffic increases over time. The CRTC's main reason for denying CNCP's original application was based on its conclusion that CNCP would not be financially viable if required to pay a full contribution over a 10-year period. Given the CRTC's new directive, CNCP argues that a declining contribution rate over the same period would require a different calculation of CNCP's financial viability.

Written submissions commenting on the application for review were to be filed by May 9, 1986.

(13) *Cable Television Rate Indexing*

On February 15, 1985, in response to CRTC Public Notice 1984-305, the Director submitted comments to the CRTC opposing its proposal to permit cable television companies to increase their monthly fees annually by a maximum amount equal to 80 per cent of the annual increase in the Consumer Price Index without the prior approval of the CRTC.

In his submission the Director argued that rate indexing is not an appropriate regulatory treatment of cable rates given the industry's natural monopoly characteristics and the associated need to effectively scrutinize rates as a means of protecting the public interest. In this regard the Director argued that rate indexing would not allow the CRTC to protect subscribers from excessive rates because indexing does not (i) compel cable firms to reduce costs, (ii) provide the CRTC with the opportunity to pressure cable firms to reduce costs, (iii) ensure that monopoly rents are applied to developing the Canadian broadcasting system in accordance with the firm's licence to operate, (iv) provide an incentive to improve productivity, (v) ensure that productivity gains that may occur are reflected in rate adjustments, and (vi) pass through to subscribers the regulatory cost savings that might result from indexing.

On February 13, 1986, the CRTC issued Public Notice CRTC 1986-27 entitled *Proposed Regulations Respecting Cable Television Broadcasting Receiving Undertakings*. As originally proposed, the Regulations allow cable television companies annual rate adjustments of up to 80 per cent of the percentage increase in the Consumer Price Index without the prior approval of the CRTC.

(14) *Structural Separation of Multiline and Data Terminal Equipment*

On November 9, 1984, the CRTC issued Public Notice 1984-66 requesting comments on whether Bell Canada and B.C. Tel should be required to provide multiline telephone and data terminal equipment and related services only through a separate company.

In issuing the notice the CRTC expressed its concern that the established telephone carriers, which also supplied monopoly services, could use the revenues from their regulated monopoly services to cross-subsidize their competitive operations such as the provision of terminal equipment, and thereby frustrate the development of competition.

The Director submitted final argument on March 5, 1985, which indicated that requiring telecommunication carriers to provide competitive services through a separate corporation is a desirable and effective measure for the detection and prevention of possible anti-competitive cross-subsidization of such services. The Director also commented that such a policy would permit the removal of competitive services from the regulatory arena and thereby reduce the regulatory burden on the affected firms.

Bell Canada and B.C. Tel, which submitted their reply comments on April 12, 1985, argued that a regulatory costing approach was a cost-effective and appropriate means of dealing with the issue of cross-subsidization and therefore a viable alternative to structural separation. On March 20, 1986, the CRTC released its final decision (Telecom Decision CRTC 86-5) on this matter.

Although the CRTC believed that structural separation would effectively deal with the question of cross-subsidization it nevertheless chose to allow both carriers to continue selling multiline and data terminal equipment, and to rely on regulatory costing safeguards for protection against cross-subsidization from monopoly services. The CRTC was of the opinion that

the costing approach provided an equally acceptable, more practical and less costly means of meeting its regulatory objectives. It was also satisfied that the existing level of competition in this market would ensure that Bell's and B.C. Tel's rates are just and reasonable.

(15) *Telesat Canada/Telecom Canada Connecting Agreement*

On July 15, 1985, the CRTC received an application from Telesat Canada and Bell Canada for approval to amend the system interconnection agreement (Connecting Agreement) made between Telesat and the members of Telecom Canada on December 31, 1976.

Under the proposed amendments, Telesat would be permitted to develop, market and sell all satellite services to any end users. The existing agreement required that Telesat limit its sales of satellite services to telephone companies only. Other changes included introducing a ceiling on transfer payments from Telecom Canada until their discontinuation in 1987, and allowing the leasing of partial radio channels to non-telecom users. The Director filed a letter of intervention on August 14, 1985.

The Director was of the opinion that the amendments removed important constraints to competition within this market and therefore should be viewed positively. The Director also submitted that these changes would provide Telesat with greater corporate independence and encourage aggressive marketing on the part of Telesat. This, in turn, would stimulate the introduction of new satellite services in the provision of long-haul data video and other private line services.

Although in the Director's opinion the Connecting Agreement would be substantially improved by the proposed amendments, he nevertheless held that the overall agreement still contained conditions and constraints that continued to significantly impede Telesat's ability to diversify and effectively compete with terrestrial carriers, thereby offsetting many of the benefits generated by the amendments.

Consequently, the Director recommended that the amendments to the Connecting Agreement be given interim approval by the CRTC, but requested that the proposed Connecting Agreement as a whole be given a fuller public examination before any final decision was made. The CRTC rejected this request and on August 21, 1985, granted interim approval of the amendments.

A final decision on this matter is still awaited.

(16) *British Columbia Telephone Company — Purchasing Policy*

On July 23, 1985, B.C. Tel, in a letter addressed to the CRTC, advised the CRTC that the company wished to abandon its existing competitive bidding purchasing policy. It informed the CRTC that the company would instead favour Microtel Inc. as its supplier of first choice. The company also suggested that a price comparison test would be relied upon to ensure that the prices paid for its telecommunications equipment purchases were just and reasonable.

Competitive bidding came into effect in 1980 after B.C. Tel sought and was granted CRTC approval to acquire GTE Automatic Electric (Canada) Ltd. and Lenkurt Electric (Canada) Ltd. These companies were the two largest suppliers of telecommunications equipment to B.C. Tel. They have since been amalgamated and now form Microtel Inc.

In support of its proposed changes, B.C. Tel submitted that competitive bidding had impeded the volume and quality of proprietary information flows between B.C. Tel and its affiliates. As a result the benefits of vertical integration had been negated. Moreover, B.C. Tel claimed that Microtel's future viability and growth had also been jeopardized by the existing purchasing agreement.

B.C. Tel was of the opinion that its proposed changes to the purchasing agreement would stimulate the flow of proprietary information and help build a successful design and manufacturing subsidiary capable of competing in world markets. The company also suggested that price comparison tests would ensure that the equipment prices paid by B.C. Tel to Microtel would be in all cases as low as, or lower than, the prices paid by any other customer in Canada

for comparable Microtel products and services. The CRTC, in Public Notice 1986-11 of February 14, 1986, called for public comments on this matter.

The Director, who submitted written comments on the matter in April 1986, concluded that contrary to B.C. Tel's claims, and as evidenced in the company's public filings, extensive flow of proprietary information is being exchanged between B.C. Tel and its affiliates and the present purchasing agreement is not threatening Microtel's future financial viability.

The Director was also of the opinion that price comparison studies are not an efficient and reliable means of ensuring that the equipment purchased by a vertically integrated carrier from its subsidiary, as is the case for B.C. Tel and Microtel, constitute necessary procurements or that the prices paid for such equipment or its equivalent are the lowest available.

The availability to Microtel of an expanded captive market in B.C. Tel purchases was also seen as leading Microtel to become risk averse, and thereby disinclined to develop new products and markets.

Finally, the Director argued that the new purchasing agreement would unreasonably foreclose the B.C. telecommunications equipment market to potential competitors that are more efficient and innovative than Microtel.

B.C. Tel had until April 18, 1986, to file its reply comments.

(17) *Resale of Primary Exchange Service*

In Telecom Decision CRTC 85-19, the CRTC indicated that it was prepared, in the near future, to permit firms to acquire bulk local telephone service from federally regulated carriers for the purposes of reselling such service in competition with the telephone companies. The CRTC directed carriers to file comments on these issues by November 26, 1985.

On January 23, 1986, the CRTC issued Telecom Public Notice 1986-8 inviting comments from all federally regulated carriers and other parties on the November submissions of the carriers and, in particular, on the impact of permitting resale to provide primary exchange voice services.

The Director and other parties submitted written comments on March 28, 1986. The Director argued that a decision permitting resale to provide local telephone service would produce a number of benefits for subscribers and consumers, including the more efficient use of the telephone network, cheaper telecommunication services, and the increased availability of technical advances to business and residential subscribers.

In particular, the Director's submission draws the CRTC's attention to the advantages of shared tenant services. It is argued that such services allow multiple users in a single location, such as an office tower or industrial park, to enjoy the cost savings associated with the sharing of a sophisticated telecommunications switch and associated telephone lines. In addition, the submission urges the CRTC to allow individuals to own and operate pay telephones and to retain the proceeds from such installations. The Director argues that by allowing such ownership the public would benefit from increased public access to telephone service and possibly from lower rates. Since the type of firms which will engage in the reselling of local service will be unlikely to possess market power, the Director argues that regulation of this activity by the CRTC should be limited to ensuring that those who resell primary exchange voice services conform to existing industry standards for the provision of such service.

Reply comments are to be filed by April 25, 1986.

(18) *Financial Markets: Ontario Securities Commission Policy Review*

On May 2, 1984, the Ontario Securities Commission (OSC) issued a press release outlining its intention to convene a policy review hearing to examine the terms and conditions under which non-resident, domestic financial and non-financial institutions are allowed to operate in the Ontario securities industry. Public hearings into this matter were held in November and December 1984.

The Director's submission to the OSC argued that the prevailing restrictions which govern the ownership of market intermediaries operating in Ontario have a negative impact on the ability of the capital market to fully serve the present and future needs of Canadian investors and issuers of securities. The issues identified during the proceedings are described in greater detail on page 69 of the 1985 Annual Report.

On February 19, 1985, the OSC submitted its report entitled *A Regulatory Framework for Entry Into and Ownership of the Ontario Securities Industry* to the Ontario Minister of Consumer and Commercial Relations. The report contained the following major recommendations:

(a) The current exemptions from regulation for financial intermediaries dealing in certain classes of securities and transactions should be abolished, and all market participants should be registered and thus be subject to regulation.

(b) The permissible individual and aggregate foreign ownership limits for an Ontario securities firm should both be raised from the current 10 percent and 25 percent to 30 percent.

(c) The restrictions applying to the ownership of market intermediaries by financial institutions should be made the same as those applying to non-residents.

(d) A new category of registrant should be created to allow for the direct entry of firms owned more than 30 percent by non-residents. In addition, a limit of 30 percent of the industry total should be imposed on the aggregate capital of firms in this category along with a limit on the capital of individual firms of 1.5 percent of the industry total.

The OSC report reflected an acceptance of the essential arguments put forth by the Director in his submission, and by other respondents at the hearing concerning the desirability of allowing the Ontario securities industry greater access to capital and of allowing increased participation in the industry by foreign firms. However, those OSC proposals expressly intended to maintain the objectives of substantial Canadian control of the industry and a strict segregation of each institutional "pillar" of the financial system would, in some respects, be restrictive of competition and would have the potential of unnecessarily limiting the efficiency of the capital markets.

In its Bulletin of September 6, 1985, the OSC published for discussion draft regulations based on recommendations in its February 1985 report. On November 20, 1985, the Director submitted a letter to the OSC providing preliminary comments on the proposed regulations.

The Director's letter outlined a number of alternative means of accomplishing the goals espoused by the OSC which would be less restrictive of competition. It was suggested that greater competition would be likely if the limitations on registration of foreign dealers were less stringent, that increasing the permissible levels of investment in resident securities firms by both foreign and institutional investors would provide greater access to capital while retaining Canadian control, and that the OSC should convene a further rulemaking proceeding after it has collected data on activities in the exempt markets.

As of March 31, 1986, the government of Ontario had yet to decide whether or not to implement the OSC's recommendations.

(19) *Parliamentary Committee Hearing Concerning the Regulation of Canadian Financial Institutions*

On July 10, 1985, the Director appeared before the House of Commons Standing Committee on Finance, Trade and Economic Affairs to present his views on the government's Green Paper on financial regulation. Issued by the federal Department of Finance in April 1985, the document identified key regulatory issues and outlined possible regulatory responses to developments that have occurred in the financial services sector.

The Green Paper proposals focussed on two key issues: the control of self-dealing and conflict of interest abuses. To address concerns regarding the potential impact of self-dealing

on the solvency of financial institutions, it was proposed to implement a general ban on non-arm's-length transactions among financial institutions and associated companies, with limited exceptions. On the issue of the control of conflict of interest abuses, the Green Paper recommended several measures, including a requirement that financial institutions wishing to gain access to a wider range of powers would have to do so through federally incorporated financial holding companies (FHCs). It was further proposed that "Chinese Walls" procedures be implemented to prevent the flow of confidential client information between the various departments of a financial institution or within an FHC, which could potentially give rise to conflicts.

In June 1985 the Green Paper was referred to the House of Commons Finance, Trade and Economic Affairs Committee for detailed study. In his submission to the Committee, the Director stressed the importance of ensuring that the regulatory measures adopted to safeguard institutional solvency and financial system stability do not unnecessarily impede competition and the free play of market forces, thereby creating inefficiencies in our capital markets. The brief sought to emphasize the need to examine more fully the issues relevant to the goals of financial regulation, and to strike an appropriate balance between policies designed to achieve consumer protection and system stability and those aimed at increasing efficiency in the financial services sector.

On the issue of self-dealing, the Director expressed the view that alternative mechanisms are available to reduce the potential for abuse in self-dealing transactions. The Director submitted a detailed proposal for discussion based on the creation of an internal corporate control committee to consist of independent Board Directors, empowered to evaluate proposed non-arm's-length transactions. Under such a system, legal responsibility would be established requiring the corporate committees to consider the interests of both shareholders and depositors and to provide for improved monitoring and redress procedures.

The Director's brief concurred with the position taken in the Green Paper that Chinese Walls can be used effectively to control conflicts of interest that can arise between fiduciary and other types of financial activities. However, it suggested that the use of such procedures could be expanded to manage a broader range of potential conflicts, thereby allowing a greater commingling of financial activities within individual institutions. The Director argued that this type of regulatory approach could be particularly important for smaller financial institutions for which the creation of a financial holding company may not be practical. Heavier reliance on the Chinese Wall could constitute another way of enhancing competition among financial institutions, could result in broader access to services for consumers, and could promote greater efficiency within the financial services industry than could likely be achieved by networking arrangements alone. The Director argued that it would also entail less regulatory involvement in the financial sector.

On November 26, 1985, the House Finance Committee released its report on the federal Green Paper. The recommendations and conclusions reflected the Committee's belief in a need to balance the public policy objectives of institutional solvency and system stability, and competition, while at the same time improving prudential safeguards and providing greater diversification of corporate powers to non-bank institutions. The House Committee's concept of how best to regulate financial institutions closely resembled that which formed the basis of the Director's submission.

On the issue of self-dealing, the Committee rejected the Green Paper proposal of a general ban, in favour of an approach which would lessen the potential for self-dealing abuse. Its report explicitly referred to the proposals put forth by the Director based on the concept of enhanced corporate governance, as being incorporated in their recommendations concerning the creation of committees of independent Board Directors to review all non-arm's-length transactions.

The Committee also made direct reference to the Director's proposals for managing conflicts of interest through the creation and maintenance of Chinese Wall procedures. The Committee expressed optimism that Chinese Walls, together with the use of business conduct

review committees and improved supervision, would greatly lessen the potential for conflict of interest abuses.

As of March 31, 1986, the government had not yet reached a decision on whether to implement the substantive proposals contained in the Green Paper or to accept the alternative recommendations put forth by the House Finance Committee.

Transport

(20) *Federal Express — Application to Amend its Commercial Air Services Licence*

In December 1982 the Director intervened before the Air Transport Committee (ATC) of the Canadian Transport Commission (CTC) in support of an application by Federal Express to amend its licence. Details of the ATC hearing and decision can be found at page 82 of the 1984 Annual Report. The decision was appealed to the Federal Court by Canada Post Corporation and Loomis Courier Service Ltd. On October 9, 1985, Loomis discontinued its action in the Federal Court. As of March 31, 1986, no hearing date had been set for the Canada Post appeal.

(21) *Québec Aviation Ltd. — Application to Consolidate Licences*

On March 15, 1985, the Director filed an intervention statement with the ATC supporting an application by Québec Aviation Ltd. to consolidate its licences to operate commercial air services.

By decision dated August 27, 1985, the ATC approved the application.

(22) *Nordair Inc. — Application to Consolidate Licences*

On April 9, 1985, the Director filed an intervention with the ATC in support of an application by Nordair Inc. to consolidate two of its licences to operate commercial air services. The consolidation request affected service to various points in Québec, Ontario and Manitoba, including the cities of Montréal, Toronto and Winnipeg. The ability to provide new non-stop service and the enhanced opportunity for network operating efficiency were identified as advantages to consolidation. The statement cited Nordair Inc.'s record as an effective competitor and also suggested that consolidation would be consistent with *Freedom to Move*, the July 1985 Discussion Paper from Transport Canada advocating competition rather than regulation as the major determinant of industry structure, conduct and performance.

By decision No. 9584 dated March 12, 1986, the application was approved.

(23) *Soundair Corporation (Commuter Express), Mississauga — Request to Operate Toronto to Cleveland*

On July 4, 1985, the Director wrote to the Minister of Transport in respect of a request by Soundair Corporation to operate a scheduled international air service between Toronto and Cleveland. Authority to designate carriers to operate on international or transborder routes is at the discretion of the Minister of Transport pursuant to bilateral air agreements. The Director's statement urged that this discretion be exercised in Soundair's favour as Soundair was an innovative and efficient carrier — the type of new entrant necessary for a dynamic and competitive airline industry.

By letter dated September 17, 1985, the Minister of Transport exercised his discretion, according to the terms of Canada-U.S. air bilateral agreements, and requested the CTC to select a carrier to operate on this route. By decision No. 9485 dated January 24, 1986, the ATC approved Soundair's application.

(24) *Air Atlantic Ltd. — Application to Operate a Commercial Air Service*

On October 11, 1985, the Director filed an intervention with the ATC supporting an application by Air Atlantic Ltd. to operate a scheduled commercial air service connecting certain points in Newfoundland, Prince Edward Island, New Brunswick, Québec and Nova Scotia. The Director submitted that the new service would offer competition to incumbent car-

riers, including Eastern Provincial Airways Limited, Air Canada and Labrador Airways Limited, and that approval of the application would be consistent with the Domestic Air Policy of May 1984 and also accord with the endorsement of competition and its benefits appearing in *Freedom to Move*.

By Decision No. 8035 dated January 14, 1986, the ATC approved this application, and the arguments of the Director were noted therein.

(25) *Wardair Canada Inc. — Application to Operate Scheduled Commercial Air Service*

On February 14, 1986, the Director filed an intervention with the ATC in support of an application by Wardair Canada Inc. to operate a national scheduled commercial air service. The statement recommended approval on the basis that the new service would offer needed competition to existing dominant carriers (Air Canada, CP Air, and Pacific Western Airlines), would offer plant rationalization advantages in anticipation of a deregulated operating environment, and would be consistent with the recommendations in *Freedom to Move* and the subsequent report of the House Committee on Transport.

By letter dated March 13, 1986, the Secretary of the ATC advised the Director that the ATC had not exercised its discretion to accept the Director's late intervention statement, although the Director's arguments were similar to those of the Consumers Association of Canada which were part of the pleadings.

On March 20, 1986, the ATC approved Wardair's application.

(26) *Regulations Affecting Freight Interswitching between Canadian Railways*

As described at page 74 of the 1985 Annual Report, the Director has twice provided written submissions to the Railway Transport Committee (RTC) of the CTC on its inquiry into railway freight interswitching regulations.

In April 1985 the RTC issued its second report on this inquiry, which summarized the various parties' submissions as well as comments received on those submissions. The report concluded that a large quantity of additional information was still required and invited all interested parties to provide further comments respecting the potential effects of alternative revised interswitching regulations. At the same time, the RTC requested the railways under federal jurisdiction to provide statistical information concerning interswitching traffic and costs.

On November 5, 1985, the RTC released its proposal for amendments to the freight traffic interswitching regulations. The salient points of the proposal are as follows:

(a) to maintain the four mile interswitching limit where all sidings at a station are within four miles of an interchange;

(b) where some sidings at a station are outside the four mile limit, to establish a secondary interswitching zone corresponding to the limit of the station where the interchange is located;

(c) to establish a maximum interswitching charge in the primary interswitching zone of $200 per car;

(d) to require the line carrier and terminal carrier to negotiate interswitching charges for traffic moving to or from the secondary interswitching zone, such charges to be negotiated on a terminal by terminal basis but in the event no agreement can be negotiated for a particular terminal, the RTC would establish the charge at that terminal;

(e) to continue to require the line carrier to absorb a minimum of 50 percent of the interswitching charge.

As of March 31, 1986, no decision has been made whether to implement the RTC's proposal.

(27) *V.O.T. Transport Ltd.*

On January 30, 1985, the Director intervened before the Ontario Highway Transport Board (OHTB) in support of an application by V.O.T. Transport Ltd. (V.O.T.) to obtain interprovincial operating authority to transport automobiles between Ontario and British Columbia. Additional information on this matter appears at page 77 of the 1985 Annual Report.

The Director introduced evidence through an expert witness who argued that V.O.T. would introduce significant competition into the long-distance transportation of automobiles between Ontario and British Columbia, which was dominated by rail carriers.

On July 8, 1985, the OHTB handed down its decision, granting V.O.T.'s application.

(28) *Hillside Auto Carrier Limited*

On November 8, 1984, the Director intervened before the New Brunswick Motor Carrier Board (NBMCB) in support of an application by Hillside Auto Carrier Limited (Hillside) to obtain interprovincial operating authority to transport automobiles between New Brunswick and other provincial jurisdictions. Additional information on this matter appears at page 77 of the 1985 Annual Report.

The Director introduced evidence through an expert witness who argued that Hillside would introduce significant competition into the market.

On March 18, 1986, the NBMCB handed down its decision, denying Hillside's application due to a lack of shipper support.

(29) *Prairie Provinces Joint Hearing — Trucking*

Further to the February 27, 1985, agreement of the Council of Ministers Responsible for Transportation and Highway Safety to take action to achieve the objective of "developing and implementing common lists of commodities the transportation of which may be taken without a requirement to prove public convenience and necessity," the Alberta, Manitoba and Saskatchewan Motor Boards issued a Public Notice inviting submissions and announcing joint public hearings on this matter.

The Director, through an expert witness, filed a written submission and recommended that all of the commodities proposed for designation as ease of entry commodities be so designated. He also recommended that there be uniformity between intra- and extra-provincial designation and that consideration be given to holding additional hearings so that the list of ease of entry commodities would be as wide as possible.

The expert witness retained by the Director appeared before the Joint Panel. A summary of the Director's submission was read at subsequent hearings that the Joint Panel held in different cities.

As of March 31, 1986, Alberta and Manitoba have issued a decision designating several commodities as ease of entry commodities. A decision from the Saskatchewan Board is still pending.

(30) *Roadway Express, Ltd. — Intervention before the Ontario Highway Transport Board*

On May 10, 1985, the Director filed a statement of intervention before the OHTB in the matter of an application by Roadway Express, Ltd. to transfer to itself operating licences held by Harkema Express Lines Ltd. The intervention argued that allowing the transfer would be beneficial to competition.

The public hearing in this matter commenced on May 28, 1985, during which the direct evidence of the applicant was introduced. A second session of the hearing commenced on October 28, 1985. At this stage, the Director introduced evidence through an expert witness. The gist of that evidence was that allowing the entry of large American carriers into the trans-border trucking market would not substantially harm the operators of Canadian trucking

firms. The expert witness cited the experience in Québec, where American firms have operated for several years, and empirical evidence in Québec and the United States showing that in certain trucking markets, specifically short-haul less-than-truckload service, smaller firms have an operational advantage over firms such as Roadway, which specialize in long-haul less-than-truckload services.

On December 28, 1985, the OHTB rendered its decision recommending that the Ontario Minister of Transportation and Communications allow the transfer. A motion for judicial review of the Minister's decision by objectors to the application was pending as of March 31, 1986.

(31) *Proposed Regionalization of General Freight Carriers — Manitoba*

On October 15, 1985, the Director filed with the Manitoba Motor Transport Board a letter of intervention in response to the public notice of July 18, 1985, relating to the Board's proposal to regionalize the operating authorities of general freight carriers.

In his letter, the Director offered comments on the likely effects of this proposal and indicated that he would submit evidence at any subsequently held hearings on this matter. Such evidence would demonstrate that the best protection the Board could offer to smaller carriers from being taken over by the larger ones is to create an environment that will allow them to become more effective, cost competitive and innovative.

At the end of the fiscal year the Board had not yet called such hearings.

(32) *Freedom to Move — House of Commons Standing Committee on Transport*

By Order of October 7, 1985, the document entitled *Freedom to Move*, the July 1985 Transport Canada Discussion Paper on regulatory reform, was referred to the House of Commons Standing Committee on Transport. Included in the Order of Reference was a request that the Committee examine and comment upon several issues, including the role of transportation in improving Canada's trade position, the role of transportation Crown corporations, foreign control of Canadian transportation companies, services in northern and remote areas in a new regulatory environment, compensatory rail rates and measures to discourage predatory pricing in a new regulatory environment, and the protection or enhancement of services to captive shippers.

On December 13, 1985, the Director submitted to the Committee extensive comments upon many of these issues. His comments were premised upon the view that the matters charged to the Committee related to the prospects for competition in Canada's transportation industry and, therefore, had direct implications for the role of the Combines Investigation Act and competition policy generally.

Three preliminary points were made. First, as regulation of entry and pricing is withdrawn, as proposed in *Freedom to Move*, general laws of general application like the Combines Investigation Act will apply to the transportation industry. Second, equality of treatment for all participants is not unwise except for certain aspects of the railroad industry. Third, the new transportation policy must pay particular attention to the interface between the Combines Investigation Act and the National Transportation Act in the areas of, for example, mergers, abusive pricing and inter-carrier agreements.

On the specific points mentioned in the Order of Reference, the Director stated that *Freedom to Move* may not go far enough in ensuring that Crown corporations operate as efficiently and competitively as private firms. In the absence of privatization, it was urged that imposed public duties be segregated and compensated directly, thereby avoiding the potential for cross-subsidization. Closely enforced guidelines, it was said, could also be used as a substitute for the discipline of private ownership.

The foreign control of Canadian transportation companies was seen by the Director as primarily a concern of the Canadian trucking industry. Studies commissioned by the Director of the transborder LTL trucking industry were cited as support for the position that local

Canadian carriers are strong and are not apt to suffer from entry by foreign carriers into the Canadian trucking industry.

The Director submitted that service to northern and remote areas could benefit from less regulation and more competition in terms of service frequencies, fares and rates. Where service reduction may occur, and where services are necessary, direct public assistance should be available.

On compensatory rail rates and predatory pricing, the Director cautioned that predation will not be a significant problem in a deregulated environment. However, assuming that the compensatory rate provision in the Railway Act is to be maintained (section 276), the Director urged that the text should be modified so as to ensure that non-compensatory rates should be disallowed only when they have the effect or tendency of substantially lessening competition.

In its Report dated December 18, 1985, the Committee endorsed some of the points raised by the Director, particularly those regarding services to northern and remote areas and Crown corporations. The Committee urged a strengthening of section 276 but without any competition criteria.

This Report has formed part of the background material which the Department of Transport and other departments in the federal government are considering in their current effort to revise the National Transportation Act.

5. Other Matters

(1) *Task Force on Computer Reservation Services*

A member of the Director's staff represented Consumer and Corporate Affairs Canada on this task force, which examined the issue of the existence of bias in the operation of computer reservation systems.

The task force made its report to the Minister of Transport on June 21, 1985. It found that there was no significant degree of bias in the operation of computer reservation systems in Canada. In particular, it was noted that Air Canada had operated its Reservec system as an industry system and had set up an independent group within the company to manage Reservec. The report recommended that, with the changing competitive environment in air transport, a periodic examination of the issue be undertaken.

(2) *Monitoring Order of Prohibition — The Transportation of Used Household Goods*

The Prohibition Order issued by the Supreme Court of Ontario on December 15, 1983, is described in the 1984 Annual Report at page 24. The Bureau is continuing to monitor compliance with the Order, assist in any questions with respect to its application and promote increased competition within the industry.

(3) *Canadian Conference of Motor Transport Administrators*

In June 1984 a member of the Director's staff became an *ad hoc* member of the Standing Committee on Motor Carriers of the Canadian Conference of Motor Transport Administrators (CCMTA). The CCMTA is an organization of motor carrier regulators and transport policy makers in Canada, including representatives of all the provinces, the territories and the Government of Canada. The Standing Committee on Motor Carriers has been charged with implementing a series of reforms in the regulation of extra-provincial trucking announced by the federal and provincial ministers of transport in May 1984.

Members of the Director's staff have met independently of the CCMTA with officials of a number of provinces to provide assistance regarding the application of the Combines Investigation Act and changes to their regulatory policy that would have the effect of introducing more competition in the trucking industry.

(4) *Ontario Rates Committee*

During 1984 and 1985, a representative of the Director's staff was a member of a committee formed by the Ontario Ministry of Transportation and Communications to recommend changes in the regulation of pricing in the Ontario trucking industry. A final report was submitted by the Rates Committee in April 1985.

(5) *Container Shipping Services — Port of Montréal*

This matter relates to the disposition of documents seized under section 10 of the Combines Investigation Act, which the Federal Court has ordered retained by the Court Administrator pending the resolution of the challenge to these seizures under the Charter of Rights and Freedoms. The facts of this particular case are summarized at pages 92 and 93 of the 1984 Annual Report.

As of March 31, 1986, the documents in question were still deposited with the Federal Court Administrator.

(6) *Airport Management Task Force*

In the May 1985 budget the government announced that options for a new self-sustaining system for managing federal airports were being developed. This initiative was again discussed in *Freedom to Move*. As part of this airport review, the Minister of Transport struck a governmental committee to closely examine many of the outstanding issues.

To apprise that Committee of the competition policy concerns associated with various airport management schemes, a member of the Director's staff sent to the Committee a preliminary assessment of possible competition issues. Close liaison is continuing with the Committee.

As of March 31, 1986, the Committee report was pending.

(7) *Transborder Trucking Studies*

The Canadian Trucking Industry has expressed a great deal of concern over the impact of deregulation on Canadian trucking markets. Canadian carriers are fearful that they will be unable to compete with large U.S. carriers, thereby resulting in a U.S. domination of Canadian trucking. In an attempt to examine this issue more closely, the Director commissioned two separate studies.

One study examined the effect of U.S. participation in the intra-Québec, as well as the Québec — U.S. trucking markets. For a number of years now, Québec has allowed entry by U.S. carriers into these markets. Therefore, a study of this province's trucking industry would provide some important insight into the ability of, and manner in which, Canadian carriers compete with their U.S. counterparts.

This study, which was completed in November 1985, demonstrated that Québec carriers were generally able to compete effectively with U.S. carriers. Furthermore, in certain segments of the market, notably short-haul transportation between the outlying regions and Montréal or Québec City, Québec carriers realized certain scope economies which were not available to large U.S. carriers. These results established that the fears of the Canadian trucking industry concerning U.S. carrier competition are largely overstated. The study served as important input into the current debate on trucking deregulation. It has also been used to support an intervention in Ontario.

The second study, which is scheduled for completion in April 1986, is a detailed examination of the Ontario — U.S. transborder trucking market, which is without question Canada's most important transborder trucking market. It provides considerable opportunity for head-to-head competition between U.S. and Canadian carriers.